CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 179

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORM., ETC., ET AL., PETITIONERS,

vs.

CHEMICAL FOUNDATION, INC.; E. I. DU PONT DE NEMOURS & CO., ETC., ET AL.

No. 180

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, PETITIONER,

vs.

E. I. DU PONT DE NEMOURS & CO. AND WALTER O. WOODS, AS TREASURER OF THE UNITED STATES

No. 181

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORM. ROESSLER, PETITIONER,

vs.

E. I. DU PONT DE NEMOURS & CO. AND WALTER O. WOODS, AS TREASURER OF THE UNITED STATES

No. 182

BADISCHE ANILIN & SODA FABRIK, PETITIONER,

vs.

E. I. DU PONT DE NEMOURS & CO. AND WALTER O. WOODS, AS TREASURER OF THE UNITED STATES

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 4, 1930

CERTIORARI GRANTED OCTOBER 13, 1930

(35,101, 35,102, 35,103, 35,104).

(OVER)

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 271

WALTER O. WOODS, AS TREASURER OF THE UNITED STATES, PETITIONER,

vs.

THE CHEMICAL FOUNDATION, INC., AND E. I. DU PONT DE NEMOURS & CO.

No. 272

HOWARD SUTHERLAND, AS ALIEN PROPERTY CUSTODIAN, PETITIONER,

vs.

FARBWERKE VORMALS MEISTER LUCIUS & BRÜNING, E. I. DU PONT DE NEMOURS & CO., AND WALTER O. WOODS, AS TREASURER OF THE UNITED STATES

No. 273

HOWARD SUTHERLAND, AS ALIEN PROPERTY CUSTODIAN, PETITIONER,

vs.

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORM. ROESSLER, E. I. DU PONT DE NEMOURS & CO., AND WALTER O. WOODS, AS TREASURER OF THE UNITED STATES

No. 274

HOWARD SUTHERLAND, AS ALIEN PROPERTY CUSTODIAN, PETITIONER,

vs.

BADISCHE ANILIN & SODA-FABRIK, E. I. DU PONT DE NEMOURS & CO., AND WALTER O. WOODS, AS TREASURER OF THE UNITED STATES

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED JULY 8, 1930

CERTIORARI GRANTED OCTOBER 13, 1930

(35,193, 35,194, 35,195, 35,196)

(35,101, 35,102, 35,103, 35,104)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 179

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORM., ETC., ET AL., PETITIONERS,

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CHEMICAL FOUNDATION, INC.; E. I. DU PONT DE NEMOURS & CO., ETC., ET AL.

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ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 3, 1930

(35,193, 35,194, 35,195, 35,196)

No. 271

WALTER O. WOODS, AS TREASURER OF THE UNITED STATES, PETITIONER,

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THE CHEMICAL FOUNDATION, INC., AND E. I. DU PONT DE NEMOURS & CO.

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No. 273

HOWARD SUTHERLAND, AS ALIEN PROPERTY CUSTODIAN, PETITIONER,

vs.

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORM. ROESSLER, E. I. DU PONT DE NEMOURS & CO., AND WALTER O. WOODS, AS TREASURER OF THE UNITED STATES

No. 274

HOWARD SUTHERLAND, AS ALIEN PROPERTY CUSTODIAN, PETITIONER,

vs.

BADISCHE ANILIN & SODA-FABRIK, E. I. DU PONT DE NEMOURS & CO., AND WALTER O. WOODS, AS TREASURER OF THE UNITED STATES

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

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IN UNITED STATES DISTRICT COURT, DISTRICT OF DELAWARE

No. 487. In Equity

THE CHEMICAL FOUNDATION, INCORPORATED, Plaintiff,

v.

E. I. DU PONT DE NEMOURS AND COMPANY (a Corporation) and WALTER O. WOODS, as Treasurer of the United States, Defendants

DOCKET ENTRIES

June 23, 1922. Bill of complaint with Exhibits A1, A2, A3, B, C, D and E annexed, filed; same day subpoena to E. I. du Pont de Nemours and Company, defendant, returnable July 13, 1922.

June 23, 1922. Order that subpoena issue to Frank White, as Treasurer of the United States, defendant, and transmitted by Clerk with copy of bill of complaint and order to U. S. Marshal for District of Columbia; same day said order filed and subpoena issued, returnable July 13, 1922. (Exit writ and copies to Marshal by registered mail.)

July 10, 1922. Proof of filing of notice of suit, &c. filed.

[fol. 2]

July 11, 1922. Frank White, as Treasurer of the United States, defendant, appears by James H. Hughes, Jr., Esq., U. S. Attorney; same day præcipe filed.

July 11, 1922. Motion of Frank White as Treasurer of the United States, defendant, with stipulation annexed, filed; same day order extending time for filing answer of defendant until August 14, 1922; same day said order filed. (Exit copy to solicitors).

July 12, 1922. Stipulation filed; same day order extending time for filing answer of E. I. du Pont de Nemours and Company, defendant, until August 14, 1922; same day said order filed. (Exit copy to solicitors.)

July 13, 1922. Marshal of the District of Columbia returns on copy of order for special process, and on subpoena for Frank White as Treasurer of the United States, "Served," &c; same day copy and writ filed.

July 13, 1922. Marshall of the District of Delaware returns on subpoena for E. I du Pont de Nemours and Company "Served" &c; same day writ filed.

July 17, 1922. Report to Commissioner of Patents mailed and copy filed.

Aug. 11, 1922. Answer of E. I. du Pont de Nemours and Company filed.

Oct. 12, 1922. Stipulation filed; same day order extending time for plaintiff to file interrogatories until November 20, 1922; same day
[fol. 3] said order filed.

Nov. 23, 1922. Stipulation filed; same day order extending time for plaintiff to file interrogatories until December 20, 1922; same day said order filed.

Oct. 6, 1927. Stipulation filed.

Oct. 6, 1927. Order consolidating this cause with Nos. 492, 494 and 495, and that defendants file answers &c. within twenty days; same day order filed.

Nov. 4, 1927. Order extending time for filing answer, &c. by Frank White, as Treasurer of United States until November 15, 1927; same day order filed.

Nov. 9, 1927. Motion to dismiss and answer of Frank White as Treasurer of United States filed.

Mar. 13, 1928. Order setting case for trial April 30, 1928, at 10 o'clock A. M. same day order filed.

Apr. 30, 1928. Stipulation, with exhibits, filed.

Apr. 30, 1928. Stipulation, with exhibits, filed.

Apr. 30, 1928. Hearing.

Nov. 16, 1928. Opinion of Court, filed.
Dec. 15, 1928. Plaintiff's notice filed.
Dec. 15, 1928. Order denying motion to dismiss; same day order filed.
Dec. 15, 1928. Interlocutory decree; same day decree filed.
Dec. 21, 1928. Report to Commissioner of Patents mailed and copy filed.
Mar. 12, 1929. Motion filed; same day order that Walter O. Woods be substituted for Frank White, as Treasurer of United States, de-
[fol. 4] fendant; same day order filed.
Mar. 12, 1929. Petition of Walter O. Woods, as Treasurer of United States for appeal, with assignments of error filed; same day order allowing appeal; same day order filed.
Mar. 12, 1929. Citation issued.
Mar. 13, 1929. Petition of plaintiffs in causes Nos. 492, 494 and 495 for appeal, with assignments of error filed; same day order allowing appeal, bond in the sum of $250; same day order filed.
Mar. 15, 1929. Order approving bond on appeal in the sum of $250 with American Surety Company of New York as surety; same day bond filed.
Mar. 15, 1929. Citation issued.
Mar. 19, 1929. Citations, with acceptance of service by solicitors for appellees endorsed thereon, filed.

[fol. 5] IN UNITED STATES DISTRICT COURT

No. 492. In Equity

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, Plaintiff,

v.

E. I. DU PONT DE NEMOURS & COMPANY (a Corporation) and WALTER O. WOODS, as Treasurer of the United States, Defendants

DOCKET ENTRIES

June 30, 1922. Bill of complaint filed; same day subpœna to E. I duPont deNemours & Company, defendant, filed; returnable July 20, 1922.

June 30, 1922. Order that subpœena issue Frank White as Treasurer of the United States, defendant, and be transmitted by clerk to U. S. Marshal for District of Columbia, with copy of bill and order &c; same day said order filed and subpœna issued, returnable July 20, 1922. (Exit writ and copies to Marshal.)

July 18, 1922. Motion of Frank White, as Treasurer of the United States to dismiss bill of complaint, filed.

July 20, 1922. Marshal of District of Columbia returns on copy of order for special process and on subpœna for Frank White as Treasurer of the United States, "Served" &c.; same day copy and writ filed.

July 20, 1922. Marshal of District of Delaware returns on subpœna for E. I. du Pont de Nemours & Company, "Served," &c.; same day

[fol. 6] writ filed.

July 20, 1922. Motion of E. I. du Pont de Nemours & Company to dismiss bill of complaint filed.

Oct. 6, 1927. Stipulation filed. (Filed in No. 487 in Eq.).

Oct. 6, 1927. Order consolidating this cause with Nos. 487, 494 and 495, and that defendants file answer, &c., within twenty days; same day order filed. (Filed in No. 487.)

Nov. 4, 1927. Order extending time for filing answer by Frank White, as Treasurer of the United States; same day said order filed. (Filed in No. 487.)

Nov. 9, 1927. Order granting leave to Frank White as Treasurer of United States to abandon motion to dismiss filed July 18, 1922; same day order filed.

Nov. 9, 1927. Motion to dismiss and answer of Frank White as Treasurer of United States, filed.

Jan. 16, 1928. Order granting leave to withdraw motion to dismiss, filed July 20, 1922; same day order and motion to dismiss and answer of E. I. du Pont de Nemours & Company, filed.

Mar. 13, 1928. Order setting case for trial April 30, 1928, at 10 o'clock A. M.; same day order filed. (Filed in No. 487.)

Apr. 28, 1928. Motion of Howard Sutherland, as Alien Property Custodian to be substituted as party plaintiff, filed.

Apr. 30, 1928. Stipulation with Exhibits, filed. (Filed in No. 487.)

Apr. 30, 1928. Hearing.

Nov. 16, 1928. Opinion of court filed. (Filed in No. 487.)

[fol. 7]

Dec. 15, 1928. Defendant's notice, filed.

Dec. 15, 1928. Order denying motion of Alien Property Custodian to be substituted as party plaintiff; same day order filed.

Dec. 15, 1928. Final decree dismissing bill of complaint, with costs; some day decree filed.

Mar. 8, 1929. Petition of plaintiff for appeal, with assignments of error filed; same day order allowing appeal, bond in the sum of $250.00; same day order filed.

Mar. 12, 1929. Motion filed; same day order that Walter O. Woods be substituted for Frank White as Treasurer of the United States, defendant; same day order filed.

Mar. 12, 1929. Petition of Howard Sutherland as Alien Property Custodian for appeal, filed; same day order allowing appeal; same day order filed.

Mar. 12, 1929. Citation issued.

Mar. 15, 1929. Order approving plaintiff's bond on appeal in the sum of $250, with American Surety Company as surety; same day bond filed.

Mar. 15, 1929. Citation issued.

Mar. 19, 1929. Citations with acceptance of service by solicitors for appellees endorsed thereon, filed.

[fol. 8] No. 494. In Equity

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm. ROESSLER, Plaintiff,

v.

E. I. DU PONT DE NEMOURS & COMPANY (a Corporation) and WALTER O. WOODS, as Treasurer of the United States, Defendants

DOCKET ENTRIES

June 30, 1922. Bill of complaint filed; same day subpœna to E. I. du Pont de Nemours & Company, defendant, issued, returnable July 20, 1922.

June 30, 1922. Order that subpœna issue to Frank White as Treasurer of the United States, defendant, and be transmitted to U. S. Marshal for District of Columbia, with copy of bill and order, &c; same day said order filed and subpœna issued, returnable July 20, 1922. (Exit writ and copies to Marshal by mail.)

July 18, 1922. Motion of Frank White as Treasurer of the United States to dismiss bill of complaint, filed.

July 20, 1922. Marshal of District of Columbia returns on copy of order for special process and on subpœna for Frank White as Treasurer of the United States, "Served", &c; same day copy and writ filed.

July 20, 1922. Marshal of District of Delaware returns on subpœna for E. I. du Pont de Nemours and Company, "Served", &c; same day writ filed.

July 20, 1922. Motion of E. I. du Pont de Nemours and Company to dismiss bill of complaint filed.

[fol. 9]

Oct. 6, 1927. Stipulation filed. (Filed in No. 487 in Eq.)

Oct. 6, 1927. Order consolidating this cause with Nos. 487, 492 and 495, and that defendants file answer, &c.; within twenty days; same day order filed. (Filed in No. 487.)

Nov. 4, 1927. Order extending time for filing answer, &c. by Frank White as Treasurer of the United States until November 15, 1927; same day order filed. (Filed in No. 487.)

Nov. 9, 1927. Order granting Frank White as Treasurer of the United States leave to abandon motion to dismiss filed July 18, 1922; same day order filed.

Nov. 9, 1927. Motion to dismiss and answer of Frank White as Treasurer of United States, filed.

Jan. 16, 1928. Order granting leave to withdraw motion to dismiss filed July 20, 1922; same day order and motion to dismiss and answer of E. I. du Pont de Nemours and Company, filed.

Mar. 13, 1928. Order setting case for trial April 30, 1928, at 10 o'clock A. M.; same day order filed. (Filed in No. 487.)

Apr. 28, 1928. Motion of Howard Sutherland as Alien Property Custodian to be substituted as party plaintiff, filed.

Apr. 30, 1928. Stipulation, with Exhibits, filed. (Filed in No. 487.)

Apr. 30, 1928. Hearing.
Nov. 16, 1928. Opinion of court, filed. (Filed in No. 487.)
[fol. 10]
Dec. 15, 1928. Defendant's notice, filed.
Dec. 15, 1928. Order denying motion of Alien Property Custodian to be substituted as plaintiff, &c; same day order filed.
Dec. 15, 1928. Final decree dismissing bill of complaint, with costs; same day decree filed.
Mar. 8, 1929. Petition of plaintiff for appeal, with assignments of error, filed; same day order allowing appeal, bond in the sum of $250; same day order filed.
Mar. 12, 1929. Motion filed; same day order that Walter O. Woods be substituted for Frank White as Treasurer of the United States, defendant; same day order filed.
Mar. 12, 1929. Petition of Howard Sutherland as Alien Property Custodian for appeal, filed; same day order allowing appeal; same day order filed.
Mar. 12, 1929. Citation issued.
Mar. 15, 1929. Order approving bond of plaintiff on appeal in the sum of $250. with American Surety Company of New York as surety; same day bond filed.
Mar. 15, 1929. Citation issued.
Mar. 19, 1929. Citations with acceptance of service by solicitors for appellees endorsed thereon, filed.

[fol. 11] In United States District Court

No. 495. In Equity

Badische-Anilin & Soda Fabrik, Plaintiff,

v.

E. I du Pont de Nemours & Company (a Corporation) and Walter O. Woods, as Treasurer of the United States, Defendants.

Docket Entries

June 30, 1922. Bill of complaint filed; same day subpœna to E. I. du Pont de Nemours & Company, defendant, issued, returnable July 20, 1922.

June 30, 1922. Order that subpœna issue to Frank White as Treasurer of the United States, defendant, and be transmitted by Clerk with copy of bill and order to U. S. Marshal for District of Columbia; same day said order filed and subpœna issued, returnable July 20, 1922. (Exit writ and copies to Marshal by mail.)

July 18, 1922. Motion of Frank White as Treasurer of the United States to dismiss bill of complaint, filed.

July 20, 1922. Marshal of District of Columbia returns on copy of order for special process and on subpœna for Frank White as Treasurer of the United States, "Served," &c; same day copy and writ filed.

July 20, 1922. Marshal of District of Delaware returns on subpœna to E. I. du Pont de Nemours and Company, "Served," &c; same day writ filed.

[fol. 12]

July 20, 1922. Motion of E. I. du Pont de Nemours and Company to dismiss bill of complaint filed.

Oct. 6, 1927. Stipulation filed. (Filed in No. 487 in Eq.)

Oct. 6, 1927. Order consolidating this cause with Nos. 487, 492 and 494, and that defendants file answer, &c; within twenty days; same day order filed. (Filed in No. 487.)

Nov. 4, 1927. Order extending time for filing answer by Frank White as Treasurer of the United States until November 15, 1927; same day said order filed. (Filed in No. 487.)

Nov. 9, 1927. Order granting Frank White as Treasurer of the United States leave to abandon motion to dismiss filed July 18, 1922; same day order filed.

Nov. 9, 1927. Motion to dismiss and answer of Frank White as Treasurer of United States, filed.

Jan. 16, 1928. Order granting leave to withdraw motion filed July 20, 1922; same day order and motion to dismiss and answer of E. I. du Pont de Nemours and Company, filed.

Mar. 13, 1928. Order setting case for trial April 30, 1928, at 10 o'clock A. M.; same day order filed. (Filed in No. 487.)

Apr. 28, 1928. Motion of Howard Sutherland as Alien Property Custodian to be substituted as party plaintiff, filed.

Apr. 30, 1928. Stipulation, with Exhibits, filed. (Filed in No. 487.)

Apr. 30, 1928. Hearing.

[fols. 13 & 14]

Nov. 16, 1928. Opinion of court, filed. (Filed in No. 487.)

Dec. 15, 1928. Defendant's notice, filed.

Dec. 15, 1928. Order denying motion of Alien Property Custodian to be substituted as party plaintiff, &c; same day order filed.

Dec. 15, 1928. Final decree dismissing bill of complaint, with costs &c; same day decree filed.

Mar. 8, 1929. Petition of plaintiff for appeal, with assignments of error, filed; same day order allowing appeal, bond in the sum of $250.; same day order filed.

Mar. 12, 1929. Motion filed; same day order that Walter O. Woods be substituted for Frank White as Treasurer of the United States, defendant; same day order filed.

Mar. 12, 1929. Petition of Howard Sutherland as Alien Property Custodian for appeal, filed; same day order allowing appeal; same day order filed.

Mar. 12, 1929. Citation issued.

Mar. 15, 1929. Order approving bond of plaintiff on appeal in the sum of $250. with American Surety Company of New York as surety; same day bond filed.

Mar. 15, 1929. Citation issued.

Mar. 19, 1929. Citations with acceptance of service by solicitors for appellees endorsed thereon, filed.

[fol. 15] IN UNITED STATES DISTRICT COURT

No. 487

[Title omitted]

BILL OF COMPLAINT—Filed June 23, 1922

To the Honorable Judges of said court, in chancery sitting:

I. Plaintiff is The Chemical Foundation, Incorporated, a corporation of the State of Delaware and a citizen of said state, with its principal office in the City of Wilmington in said state. The defendants are E. I. du Pont de Nemours and Company, a corporation of the State of Delaware, which has its principal place of business at Wilmington, in the District aforesaid; and Frank White, as Treasurer of the United States, who resides and as such officer has his office in the City of Washington, District of Columbia.

II. This suit is brought under Section 10 of the Act of Congress, approved October 6, 1917, known as the "Trading with the Enemy Act," as amended.

III. Heretofore the following Letters Patent of the United States of America were granted and issued, to-wit: Nos. 680,395, 868,294 and 718,340; the names of the inventors and patentees, the dates of issuance and the title [fol. 16] or description of the several inventions or discoveries indicating their nature and design being set forth in the said Letters Patent. Copies of the specifications thereof are hereto annexed, made a part hereof, marked "Exhibits A-1 to A-3," respectively, and the said Letters Patent or certified copies thereof are ready to be produced at the hearing of this cause. The inventors named in each of said letters patent were the original, first and sole inventors of the respective inventions or discoveries therein set forth, and lawfully filed and prosecuted applications for said letters patent; and having complied in all respects with the statutes and the rules of the patent office, the said letters patent were lawfully granted and issued pursuant to said applications.

Each of the said inventions or discoveries of said inventors was new, useful and not known or used by others in this country before his invention or discovery thereof, and not patented or described in any printed publication

anywhere before his invention or discovery thereof, or more than two years prior to his application for United States patent, and not in public use or on sale in the United States for more than two years prior to the application, and not patented in any foreign country on an application filed more than twelve months before his said application was filed in the United States, and not abandoned.

IV. Under authority of and in conformity with the said Trading with the Enemy Act and the Executive Orders made pursuant thereto, the Federal Trade Commission on or about the twenty-first day of January, 1918, granted upon the terms and conditions therein stated a certain license under Section 10 of said act to the defendant, E. I. du Pont de Nemours and Company, under the aforementioned letters patent, as more fully set forth in the copy [fol. 17] of said license hereto annexed, made a part hereof, marked Exhibit B. Said license, among other things, provided that the said defendant should pay to the Alien Property Custodian semi-annually a royalty of five per cent. (5%) of the net profit derived from the sale of the products included in said license.

V. On or about the fourteenth day of January, 1920, by order of the Federal Trade Commission acting under like authority, said license was amended so as to provide that from on and after August 1, 1919, royalty payable thereunder should be at the rate of 2 per cent. of the gross amounts received by the defendant licensee from the sale of the products included in said license, as more fully set forth in the copy of said order hereto annexed, made a part hereof, marked Exhibit C.

VI. Subsequent to the granting of the license aforesaid, the Alien Property Custodian, acting under authority of and in conformity with the Trading with the Enemy Act, as amended, and the proclamations and executive orders made pursuant thereto, after investigation, determined to be enemy owned and seized as enemy owned all of the said letters patent and every right, title and interest with respect thereto; and thereafter under authority of and in conformity with law as aforesaid, the said Custodian sold to the plaintiff said letters patent and every right, title and interest with respect thereto. The said seizures and the

instruments evidencing said sales were duly filed and recorded in the United States Patent Office, all as will more fully appear from the schedule hereto annexed, made a part hereof, marked Exhibit D, which seizures and instruments are by reference made a part hereof.

VII. On or about the first day of September, 1920, the Federal Trade Commission, acting under authority as [fol. 18] aforesaid, cancelled and terminated said license by an order, as more fully set forth in the copy thereof hereto annexed, made a part hereof, marked Exhibit E.

VIII. By reason of the foregoing plaintiff became on, to wit, the tenth day of April, 1919, and now is the sole owner of the said letters patent and the inventions and discoveries covered thereby and of every right, title and interest therein, including the rights inuring to the "owner" of said letters patent under Section 10 of the Trading with the Enemy Act.

IX. Plaintiff is informed and believes and states the fact to be that up to the time of the cancellation or termination of the said license as above set forth defendant, E. I. du Pont de Nemours and Company, operated and acted thereunder and realized divers proceeds from the sale of products included therein; but plaintiff is not informed as to what moneys, if any, may have been paid or are payable by said defendant to the Alien Property Custodian, as required by the terms of said license, nor as to what moneys, if any, are now held by the defendant Treasurer of the United States by virtue thereof.

X. In addition to the inventions covered by the letters patent enumerated in paragraph III hereof, there were licensed by the aforementioned license such other inventions owned or controlled by an enemy or ally of an enemy as might be found desirable in order to further the purposes and intent of said licenses as more particularly set forth therein; and plaintiff is the owner of divers inventions covered by United States Letters Patent other than those specified in said paragraph III, which at divers times were determined by the Alien Property Custodian to be enemy or ally of enemy owned and as such were seized and sold to the plaintiff, and which may have been used by the [fol. 19] defendant licensee as desirable for the furtherance of the intent and purposes of said license. Plaintiff

is not informed as to which, if any, of said additional letters patent owned by it were so used by the defendant licensee, nor as to the nature or extent of such use; but such letters patent, if any there be, are hereinafter referred to as "additional licensed patents." With reference to each of such additional licensed patents, each and every the allegations so far as applicable of paragraph III hereof, and each and every the allegations so far as applicable of paragraph number VI hereof, are hereby by reference repeated and alleged as fully as though incorporated herein. By reason of the premises the plaintiff became and now is the sole owner of the said additional licensed patents and the inventions and discoveries covered thereby, and of every right, title and interest therein, including the rights inuring to the "owner" of letters patent under Section 10 of the Trading with the Enemy Act.

Wherefore, the premises considered, the plaintiff prays as follows:

First. That the usual process of this court be issued to and served upon the defendant, E. I. du Pont de Nemours and Company; and that by special order of this court under Section 17 of the Trading with the Enemy Act, process be by the clerk of this court transmitted to the United States Marshall of the District of Columbia to be by him served upon the defendant, Frank White, as Treasurer of the United States.

Second. That said defendant, E. I. du Pont de Nemours and Company, be required to make full and true discovery of its operations under said license and its profits thereunder with respect to the letters patent involved in this proceeding from and after the time plaintiff became the owner thereof, as aforesaid, including the exact specification of the letters patent under which such operations were [fol. 20] conducted, and that upon such discovery being had, the plaintiff be given leave to make such amendment to this bill of complaint as it may be advised.

Third. That this Court do fix and determine the amount of a reasonable royalty for the use and enjoyment of said letters patent under said license subsequent to the time last mentioned and do adjudge and decree the payment thereof to the plaintiff.

Fourth. That an accounting be taken by this Court or under its direction to ascertain the amounts due by the defendant, E. I. du Pont de Nemours and Company, to the plaintiff in the premises, and to ascertain the amounts paid by said defendant to the Alien Property Custodian and now held by the defendant Frank White as Treasurer of the United States.

Fifth. That upon the stating of said account the defendant, Frank White, as Treasurer of the United States, be ordered to pay to the plaintiff the money, if any, so deposited with him under said license, or so much of said deposit as is necessary to satisfy the judgment and decree of this Court; and if such deposit be insufficient to pay such judgment and decree in full, that the plaintiff have decree against the said defendant, E. I. du Pont de Nemours and Company, for the deficiency.

Sixth. That the plaintiff may have such other and further relief as may be consonant with equity and as the nature of the case may require.

(Sgd.) Wm. G. Mahaffy, Solicitor for Plaintiff.
(Sgd.) Evarts, Choate, Sherman & Leon, of Counsel.

[fol. 21] EXHIBIT "A-1" TO BILL OF COMPLAINT

United States Patent Office

Johannes Pfleger, of Frankfort-on-the-Main, Germany, Assignor to Deutsche Gold & Silber Scheide Anstalt Vorm. Roessler, of Same Place.

Process of Making Indoxyl Derivatives

Specification-Forming Part of Letters Patent No. 680,395, Dated August 13, 1901

Application filed July 8, 1901. Serial No. 67,558. (No specimens)

To all whom it may concern:

Be it known that I, Johannes Pfleger, a subject of the Emperor of Germany, and a resident of 215 Gutleutstrasse, Frankfort-on-the-Main, Germany, have invented certain new and useful Improvements in Indoxyl Derivatives, of which the following is a specification.

Heumann's synthesis of indigo as set forth in the German Patent No. 54,626 (fusing phenyl-glycocol with caustic alkali), could not, despite the low prices of the materials, find any practical application, because the yield relatively to the glycocol is only about eight to ten per cent. In Friedlaender's Fortschritte der Theerfarben Fabrikation (Part II, page 100) this poor yield is ascribed to the fact that the caustic alkali destroys the indoxyl first formed, anilin being thereby formed, and, above all, (see, for instance, Biedermann, Lepetit Berichte, XXIII, page 3,290,) to the temperature of condensation, (260° to 350° centigrade,) which is so high that the phenyl-glycocol undergoes further splitting and decomposition before the condensation into indoxyl takes place. Now I have found that an alkaline amid, such as sodium amid, can be used as a means of condensation. It melts at a much lower temperature than caustic potash—namely, at about 120° centigrade—and presents the great advantage that it effects at its melting-point the required condensing effect on the aromatic glycocol, thereby avoiding the undesirable decomposition of the latter, which is caused by a too high temperature. Homologous glycocol, such as tolyl-glycocol, and also substitution glycocol, such as phenyl-glycocol-orthocarbonic acid, behave in the same manner as the simplest glycocol. In lieu of free glycocol its salts and esters may be used. The mode of operating can be largely varied, according to the qualities of the materials used. Either the alkaline amid, such as sodium amid, is melted and the glycocol introduced as such or diluted into the molten amid or the ground amid is mixed with glycocol and occasionally with a diluent and introduced into a vessel heated to the proper temperature. When the condensation takes place, ammonia escapes, so that no difficulties are experienced in eliminating the injurious influence of the air. The chemical reaction may be expressed by the following equation, (using the sodium salt of the glycocol mentioned and sodium amid:)

$$C_6H_5NH.C.H_2CO_2Na + = C_6H_4\begin{cases} NH \\ CO \end{cases}CH_2. + Na_2O + NH_3.$$

The conversion of the indoxyl derivative contained in the fused mass into indigo can be effected in the manner already known.

In lieu of the sodium amid already referred to in the foregoing other alkaline amids may be used which will produce the same action.

Example 1: Three parts of sodium amid are melted and heated to 180° centigrade, and one part of phenyl-glycocol sodium is introduced gradually into this thin fluid mass while it is being stirred.

Example 2: One part of sodium amid and two parts of ninety-eight to one hundred per cent. potassium cyanid are melted and raised to a temperature of 230° centigrade, and then one part of phenyl-glycocol sodium is introduced gradually into the mixture. The potassium cyanid does not take part in the reaction, but acts merely as a diluent and is recovered almost without loss.

Example 3: One part potassium amid and two parts sodium cyanid are melted together and raised to 230° centigrade. One part of phenyl-glycocol sodium is then introduced gradually into the mixture.

Example 4: Into a molten mass consisting of two parts of sodium amid and 3.5 parts of potassium cyanid are introduced gradually at 230° centigrade into two parts of phenyl-glycocol while it is being stirred.

Example 5: One part of sodium amid, one part of caustic potash, one part of caustic soda, and one part of potassium cyanid are melted together and one part of phenyl-glycocol ester introduced thereinto at 220° centigrade.

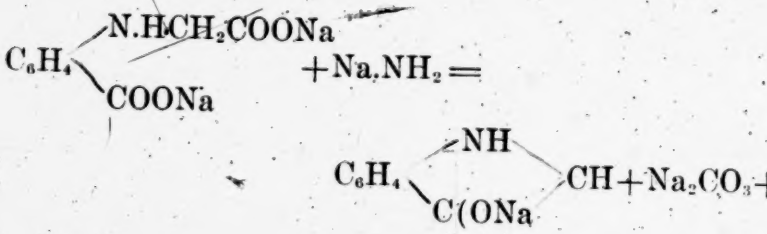
Example 6: One part of sodium amid and two parts [fol. 22] potassium cyanide are melted and one part of paratolyl-glycocol sodium introduced thereinto at 250° centigrade.

Example 7: Three parts of sodium-phenyl-glycocol-orthocarbonate and two parts of sodium amid are mixed intimately and introduced little by little into a vessel heated to 250° centigrade.

German Patent No. 105,495, Class 12, discloses a process of manufacture of indoxyl derivatives at a mild temperature from the ester of the phenyl-glycocol-orthocarbonic acid.

The technical process realized by the present invention over the process covered by the aforesaid German patent consists in the fact that in using the phenyl-glycocol-ortho-carbonic acid as initial material there is no need to use the neutral esters of this acid, which are costly and difficult to prepare, as in the present case the neutral alkaline salts, which are easy to obtain at a small cost, are used at the start. The reaction is also a different one in the present case.

While in the process disclosed in German Patent No. 105,495 an ester of the indoxyl-carbonic acid is obtained with a splitting off into water and alcohol, the condensation process forming the object of the present invention produces indoxyl, while sodium carbonate is formed and ammonia evolved in accordance with the following equation:



I claim—

The herein-described process of producing indoxyl derivatives from aromatic glycocol by reacting on the latter with an alkaline amid substantially as and for the purpose set forth.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

Johannes Pfleger.

Witnesses: Jean Grund, Michael Polk.

[fols. 23 & 24] EXHIBIT "A-2" TO BILL OF COMPLAINT

United States Patent Office

Robert Schmidlin, of Höchst-on-the-Main, Germany, Assignor to Farbwerke Vorm. Meister, Lucius & Brüning, of Höchst-on-the-Main, Germany, a Corporation of Germany.

Process of Producing Phenylglycin and Its Homologues

No. 868,294. Specification of Letters Patent. Patented Oct. 15, 1907

Application Filed May 23, 1906. Serial No. 318,297

To all whom it may concern:

Be it known that I, Robert Schmidlin, chemist, a citizen of the Swiss Republic, residing at Höchst-on-the-Main, Germany, have invented certain new and useful Improvements in the Process for Producing Phenylglycin and its Homologues, of which the following is a specification.

By the usual process for obtaining phenylglycin by the action of chloratic acid on an excess of anilin, or of anilin in presence of agents capable of combining with hydrochloric acid, like alkalies or acetates, poor yields are obtained owing to formation of by-products from the action of chloracetic acid on the phenylglycin produced.

According to the present invention good yields may be obtained, if care be taken that when the glycin or its homologues be formed it is separated as an insoluble salt of a heavy metal so that it is no longer liable to the further action of the chloracetic acid.

The process may be carried out, for instance, as follows: Chloracetic acid is allowed to act on anilin in presence of ferrous hydrate, or in presence of ferrous carbonate, and a concentrated salt solution; the phenylglycin iron salt thus formed is insoluble in a hot concentrated salt solution and may be filtered and decomposed by caustic alkali or alkali carbonate.

The following example illustrates the invention, but it is capable of variation both as regards the proportions and the details thereof: 1250 kilos of ferrous chlorid are dis-

solved in water and precipitated with the requisite quantity of soda lye or sodium carbonate, whereupon preferably 300 kilos of common salt are added and the mixture heated to from 90-100° C., 472 kilos of chloracetic acid being then added and the whole is stirred once and 510 kilos of anilin are rapidly introduced, whereupon the whole is heated under a reflux condenser for one hour and a half. When cold, the phenylglycin iron salt thus obtained is filtered, washed with some cold water, stirred with water and decomposed with soda lye or sodium carbonate. The mass is made to boil by steam and the unchanged anilin is distilled or filtered off. The ferrous oxid or ferrous carbonate is separated by filtration and the phenylglycin is precipitated from the filtrate by carefully adding dilute mineral acid. In a like manner homologues of phenylglycin, such as tolylglycin, are obtained, if for the anilin in the example be substituted the equivalent quantity of the homologue, such as toluidin.

Having described my invention, what I claim is:

The herein described process of making phenylglycin and its homologues, which consists in causing primary anilin bases to interact in the heat with chloracetic acid in presence of ferrous hydrate and a saturated indifferent alkali salt solution.

In testimony, that I claim the foregoing as my invention, I have signed my name in presence of two subscribing witnesses.

Robert Schmidlin.

Witnesses: Jean Grund, Carl Grund.

[fol. 25] EXHIBIT "A-3" TO BILL OF COMPLAINT

United States Patent Office

Otto J. Graul, of Ludwigshafen-on-the-Rhine, Germany, Assignor to Badische Anilin and Soda Fabrik, of Ludwigshafen-on-the-Rhine, Germany, a Corporation of Germany

Process of Making Cyan-Methyl Derivatives of Aromatic Amids

Specification Forming Part of Letters Patent No. 718,340, Dated January 13, 1903

Application filed January 28, 1902. Serial No. 91,635. (No specimens)

To all whom it may concern:

Be it known that I, Otto J. Graul, doctor of philosophy and chemist, a subject of the Duke of Anhalt, residing at Ludwigshafen-on-the-Rhine, in the Kingdom of Bavaria, Germany, have invented new and useful Improvements in Processes of Making Omega-Cyan-Methyl Derivatives of Aromatic Amido Substances, of which the following is a specification.

This invention relates to a new process for the production of omega-cyan-methyl derivatives of certain aromatic amins or substitution products of these latter.

By the action of formic aldehyde upon certain aromatic amins or aromatic amido substances the corresponding anhydro-formalde-hyde-aromatic-amido substance is formed. Thus formic aldehyde and anilin yield anhydro-formaldehyde-anilin. These anhydro-formaldehyde-aromatic-amido substances when treated with an alkali bisulfite, such as sodium bisulfite, yield products which are termed, for instance, in the case of anilin, "anhydro-formaldehyde-anilin-sodium-bisulfite," (see Eibner, Annalen der Chemie, Vol. 316, page 126,) and generally they are hereinafter termed "anhydro-formaldehyde-aromatic-amido-substance-alkali-bisulfite." These compounds I will hereinafter for the sake of brevity designate also as "bisulfite" compounds. Now I have found that if certain such

bisulfite compounds be acted upon by a salt of hydrocyanic acid, such as potassium cyanid or sodium cyanid, the above-mentioned omega-cyan-methyl derivatives are produced.

Among the aromatic amido substances which can be employed in carrying out this my invention are anilin, the toluidins, the xylidins, the naphthylamins, and anthranilic acid, (ortho-carboxy-anilin,) all of which substances I desire to have hereinafter included in the generic term "aromatic amido substance."

For the purposes of this invention it is immaterial how the bisulfite compound to be employed is prepared.

In the preferred embodiment of my process I operate as follows: I cause formic alde-hyde to act upon, say, sodium bisulfite, and upon this product I cause, say, anilin to act, and upon the so-resulting product I cause, say, potassium cyanid to act. It is immaterial, however, in what order the three substances first mentioned—namely, formic aldehyde, the bisulfite, and the aromatic amido substance are brought together, and this order may be varied without affecting the nature of my invention.

I will further illustrate the nature of this my invention by means of the following examples, without, however, wishing to limit myself to the proportions or other conditions therein given. The parts are by weight, and the temperature degrees refer to the centigrade-scale.

Example 1

Production of amega-cyan-methyl-anilin from anilin, formic aldehyde, sodium bisulfite, and potassium cyanid.—Mix together three hundred parts of a solution of bisulfite of soda containing forty (40) per cent of that substance ($NaHSO_3$) and eighty (80) parts of a commercial solution of formic aldehyde containing thirty-eight (38) per cent of that aldehyde. To this add ninety-three (93) parts of anilin, stirring well the meanwhile and keeping the temperature at about fifty (50) degrees. In a short time the bisulfite compound of anhydro-formaldehyde-anilin will have been formed. Now add one hundred and fifty (150) parts of caustic-soda solution containing four (4) per cent of caustic soda (NaOH) and pour it into a solution of seventy (70) parts of potassium cyanid in three hundred (300) parts of water, and heat this mixture in a wafer-bath

to a temperature of from forty (40°) to fifty (50°) degrees. After having been maintained at the above temperature for about two (2) hours the mixture is transformed into a watery and an oil-like layer. This oil-like layer is the desired omega-cyan-methyl-anilin, which may be separated directly from the warm watery layer, or the whole may be allowed to cool, so that the oil-like layer solidifies, and the solidified portion may then be separated from the watery portion by filtration. The so-obtained omega-cyan-methyl-[fol. 26] anilin is a practically pure product. I may also employ other aromatic amido substances in the place of the anilin of this Example 1; but then the working operations should be changed, as will readily be understood by chemists, so as to suit each individual case, as will be shown in the following examples.

Example 2

A. Production of the bisulfite compound of anhydro-formaldehyde-anilin.—Introduce one hundred and five (105) parts of powdered anhydro-formaldehyde-anilin into five hundred (500) parts of a solution of bisulfite of soda containing forty (40) per cent of that substance, ($NaHSO_3$). Heat this mixture by means of a water-bath to a temperature of from eighty (80°) to ninety (90°) degrees, stirring the meanwhile, until a clear solution is obtained. On cooling the liquor the bisulfite compound separates out in the form of white glistening leaflets.

B. Production of omega-cyan-methyl-anilin from the product of Example 2 A.—Introduce, while stirring, two hundred and nine (209) parts of the bisulfite compound resulting from the preceding Example 2 A into a solution of seventy (70) parts of potassium cyanid in one thousand (1,000) parts of water, and heat this mixture in the water-bath to a temperature of from forty (40°) to fifty (50°) degrees. After having been maintained at the above temperature for about two (2) hours the mixture is transformed into a watery and an oil-like layer. This oil-like layer is the desired omega-cyan-methyl-anilin, which may be separated directly from the warm watery layer, or the whole may be allowed to cool, so that the oil-like layer solidifies, and the solidified portion may then be separated from the watery layer by filtration. The so-obtained omega-cyan-methyl-anilin is a practically pure product.

Example 3

Production of omega-cyan-methyl-anilin from anhydro-formaldehyde-anilin in one operation.—Introduce one hundred and five (105) parts of anhydro-formaldehyde-anilin into five hundred (500) parts of a solution of bisulfite of soda containing forty (40) per cent of that substance and heat the mixture, stirring the meanwhile, by means of a water-bath to a temperature of eighty (80°) degrees until complete solution is effected. Now filter off any suspended impurity and add five hundred (500) parts of water and three hundred and seventy (370) parts of a cold solution of caustic soda containing ten (10) per cent of caustic soda, (NaOH). Now cool the liquid to a temperature of fifty (50°) degrees and pour it into a solution of seventy (70) parts of potassium cyanid in three hundred (300) parts of water. The omega-cyan-methyl anilin separates out almost immediately from the clear solution as an oil-like layer and may be separated from the watery layer, as described in Example 1.

In place of the anhydro-formaldehyde-anilin corresponding amounts of other anhydro-formaldehyde-aromatic-amido substances may be employed—such as the anhydro-formaldehydes of the toluidins, xylidins, &c.—and the working operations should be changed, as will readily be understood by chemists, so as to best suit each individual case.

Example 4

A. Production of a bisulfite compound from bisulfite of soda, alpha-naphthylamin, and formic aldehyde.—Produce a paste by rubbing up one hundred and forty-five (145) parts of alpha-naphthylamin with fifteen hundred (1,500) parts of an aqueous solution of sulfurous acid containing three (3) per cent of that acid. Now gradually introduce this paste into the result of mixing formic aldehyde and bisulfite of soda, (obtained as described in Example 1,) being careful to prevent the temperature of the mixture from rising above ten (10°) degrees by some means, such as external cooling. The bisulfite compound is formed almost immediately upon mixing.

In place of the above-described paste of naphthylamin I may also employ a concentrated alcoholic solution of naphthylamin.

B, Production of omega-cyan-methyl-alpha-naphthylamin.—Free the bisulfite compound arising from preceding Example 4 A from sulfurous acid and bisulfite of soda as far as practicable by washing with water. Convert it into a paste by rubbing it up with five hundred (500) parts of water, and to this paste add an aqueous solution of seventy (70) parts of potassium cyanid in three hundred (300) parts of water. Digest the whole on a boiling-water bath until the oil-like layer, which forms no longer, increases in volume. This oil-like layer is the desired omega-cyan-methyl-alpha-naphthylamin and solidifies on cooling. It may be collected in the same manner as is the omega-cyan-methyl-anilin of Example 1. The omega-cyan-methyl-alpha-naphthylamin so obtained is practically pure. If desired, it may be purified by recrystallization from a mixture of benzene and ligroin. When purified, it melts at about ninety-eight or ninety-nine (98° or 99°) degrees.

Example 5

Production of omega-cyan-methyl-anthranilic acid.—Dissolve one hundred and thirty-seven (137) parts of anthranilic acid in forty (40) parts of caustic soda dissolved in one thousand (1,000) parts of water. Cool this solution thoroughly by means of ice and gradually add to it seventy-nine (79) parts of formic aldehyde, (containing thirty-nine per cent of the aldehyde,) taking care that the temperature [fols. 27 & 28] does not rise above ten (10°) degrees. Now precipitate the anhydro compound by means of one hundred and fifty (150) parts of hydrochloric acid containing twenty-five (25) per cent of hydrochloric acid; (HCl). Convert the anhydro-formaldehyde-anthranilic acid so obtained into its bisulfite compound, as described in Example 2 A. Filter and press the bisulfite compound thus obtained from one hundred and thirty-seven (137) parts of anthranilic acid, and then rub it up to a paste with one thousand (1,000) parts of water and render the result neutral to litmus-paper by means of carbonate of soda or of bicarbonate of soda. Now gradually add to this clear neutral solution, while maintaining its temperature between forty (40°) and fifty (50°) degrees, a solution of seventy (70) parts of potassium cyanid in two hundred (200) parts of water. The reaction is soon completed. Precipitate the omega-cyan-methyl-anthranilic acid from

the resulting solution by means of a sufficient quantity of hydrochloric acid of suitable strength. The product so obtained is practically pure and is identical with the product of United States Letters Patent No. 662,754, of November 27, 1900.

In place of the potassium cyanid of the preceding examples sodium cyanid may be employed.

What I claim is—

1. The described process of making omega-cyan-methyl derivative of an aromatic amido substance which consists in acting upon a hereinbefore-defined aromatic amido substance with formic aldehyde and an alkali bisulfite and then acting upon this product with a salt of hydrocyanic acid.

2. The described process of making omega-cyan-methyl derivative of an aromatic amido substance which consists in acting upon a hereinbefore-defined anhydro-formaldehyde-aromatic-amido substance with an alkali bisulfite and then acting upon this product with a salt of hydrocyanic acid.

3. The described process of making omega-cyan-methyl derivative of an aromatic amido substance which consists in acting upon a hereinbefore-defined anhydro-formaldehyde-aromatic-amido-substance-alkali bisulfite with a salt of hydrocyanic acid.

4. The described process of making omega-cyan-methyl-anilin which consists in acting upon anilin with formic aldehyde and sodium bisulfite and then acting upon this product with potassium cyanid.

5. The described process of making omega-cyan-methyl-anilin which consists in acting upon anhydro-formaldehyde-anilin with sodium bisulfite and then acting upon this product with potassium cyanid.

6. The described process of making omega-cyan-methyl-anilin which consists in acting upon anhydro-formaldehyde-anilin-sodium bisulfite with potassium cyanid.

In testimony whereof I have hereunto set my hand in the presence of two subscribing witnesses.

Otto J. Graul.

Witnesses: Bernhard C. Hesse, Jacob Adrian.

Corrections in Letters Patent No. 718,340

It is hereby certified that in Letters Patent No. 718,340, granted January 13, 1903, upon the application of Otto J. Graul, of Ludwigshafen-on-the-Rhine, Germany, for an improvement in "Process of Making Cyan-Methyl Derivatives of Aromatic Amids," errors appear in the printed specification requiring correction, as follows: In lines 32, 39, 46, 52, 57, and 62, page 3, the words "The described," commencing each claim, should be stricken out, and the following word "process" should commence with a capital P; and that the said Letters Patent should be read with this correction therein that the same may conform to the record of the case in the Patent Office.

Signed and sealed this 6th day of October, A. D., 1903.

F. I. Allen, Commissioner of Patents. [Seal.]

[fol. 29] EXHIBIT B TO BILL OF COMPLAINT

License No. 19 (Patent)

United States of America

Federal Trade Commission

License to E. I. du Pont de Nemours and Company, of Wilmington, Delaware, under Certain Letters Patent for Intermediates, Dyes, and the Application of Dyes Owned by Enemies or Allies of Enemies

The Federal Trade Commission under authority of and in conformity with the Trading with the Enemy Act and with the Executive Order of October 12, 1917, hereby licenses E. I. du Pont de Nemours and Company, a corporation of the State of Delaware, of Wilmington, Delaware, to make, use and vend within the United States the inventions described in certain United States Letters Patent owned or controlled by enemies or allies of enemies, relating to the manufacture of certain intermediates and dyes and to cause to be made, used and vended, and to carry on and cause to be carried on the processes and inventions of certain United States Letters Patent owned or

controlled by enemies or allies of enemies relating to the application of dyes, for the term of each of the respective patents, unless sooner terminated.

Said United States Letters Patent under which this license is granted are included in a schedule annexed hereto, and it is the purpose and intent of this license to authorize and license the said licensee to use and employ the inventions of the said letters patent and each of them, and [fol. 30] such others (owned or controlled by an enemy or ally of an enemy) whether included in such schedule or not, as may be found desirable, in order to make, use and vend the group of dyes known as Indigo and its Derivatives, and to carry on and cause to be carried on, the processes disclosed and claimed in such letters patent, with respect to such group, and to relieve the licensee of liability for infringement of these and of any letters patent owned or controlled by an enemy or ally of enemy, by reason of the manufacture, use or sale or the carrying on or causing to be carried on of any process of any such letters patent concerning said Indigo and its Derivatives group of dyes, and with respect to the letters patent owned or controlled by an enemy or ally of enemy included in the annexed schedule and any other, whether or not subsequently added thereto as hereinafter provided, which have to do with the application of such dyes to fabrics, and the use of processes by dyers and others who may purchase the products of the licensee, the licensee may, by an appropriate notice on packages, invoices or otherwise, authorize purchasers and users of the said products to use and apply the same, and the licensee shall not thereby be deemed to have violated the provisions hereof forbidding sub-licenses.

The licensee during the continuance of this license shall pay to the Alien Property Custodian semi-annually within thirty days after the 1st day of February and the 1st day of August in each year, a royalty of five per cent (5%) of the net profit derived from the sale of the products included in this license, which sum the Federal Trade Commission has determined is a reasonable royalty, and which shall be the aggregate royalty to be paid by the licensee under all of the said letters patent.

The enumeration of said letters patent in said schedule is provisional and upon application by the licensee other [fol. 31] letters patent may from time to time be added thereto or removed therefrom, but the addition of any letters patent to said schedule or the removal of any letters patent therefrom, or the failure to include therein any letters patent owned or controlled by an enemy or ally of an enemy necessary or desirable to be used in the manufacture, use or sale by the licensee of Indigo and its Derivatives shall not affect this license, the terms thereof or the royalty thereunder.

The licensee shall, during the continuance of this license keep proper accounts and separate books containing full particulars of:

(a) All products made and sold under this license and of the price or prices charged and the amounts received therefor;

(b) All items of cost incurred in the use of such inventions and the manufacture and sale of products made thereunder; and

(c) All other matters and things, which, in the opinion of the Federal Trade Commission, may be material for the purpose of showing the amounts from time to time payable by the licensee concerning such royalty and what is a fair and reasonable price to the public for such product.

The licensee shall, within 10 days after the first day of February and the first day of August in each year, deliver a sworn statement to the Federal Trade Commission in writing showing the aforesaid particulars.

The licensee shall, during the continuance of this license give all information as the Federal Trade Commission may consider to be material for the purpose of ascertaining the amount of royalty payable by the licensee under this license, the cost of the use of such invention, the cost of producing and the price or prices charged by the licensee for the said products, and for that purpose shall, if requested [fol. 32] by the Federal Trade Commission, permit such person or persons as shall be authorized in that behalf by the Federal Trade Commission, at any time or times to

enter upon and inspect any factory or place of business of the licensee in which the use of said invention or the manufacture of the said products shall be carried on and all books, papers and documents of such licensee relating to such use, manufacture and sale.

If any payment under this license shall not be made within one month after the same shall have become due under the provisions herein contained (Whether demand therefor shall have been made or not), or if the licensee shall or shall — attempt to assign or part with the benefit of or grant any sub-license under this license, except as hereinbefore provided, or shall make any default in the performance or observance of any obligation on its part herein contained, or shall have violated any of the conditions of this license or any of the provisions of the statute under which it is granted, and if, after 10 days' notice in writing, shall have failed to comply with the aforesaid, then the Federal Trade Commission may, by notice in writing, and after a hearing, cancel and terminate this license as from the date of such notice, but without prejudice to and so as not in any manner to affect any liability hereunder on the part of the licensee which may then be subsisting or have accrued.

If, in the opinion of the Federal Trade Commission, the licensee has failed to use this license so as to satisfy the reasonable requirement of the public with regard to the subject matter thereof; or

If, in the opinion of the Federal Trade Commission, the licensee has failed to supply to the public the products made under this license at reasonable prices, or

[fol. 33] If, in the opinion of the Federal Trade Commission, the licensee has charged unreasonable or excessive prices for products made under this license; or

If, in the opinion of the Federal Trade Commission, the products made under this license are of unsatisfactory quality, or fail to conform to such rules and standards as may from time to time be prescribed by the Federal Trade Commission or by any competent United States authority (and the licensee shall furnish to the Federal Trade Commission in the manner prescribed by it, and when and as often as required, samples and specimens for inspection, analysis and test); or

Circumstances have arisen, which, in the opinion of the Federal Trade Commission, make it advisable that this license be canceled in whole or in part; Then

The Federal Trade Commission may, in its absolute discretion, terminate and cancel this license in whole or in part, and if canceled and terminated, the same shall be without prejudice to and so as not in any manner to affect any liability hereunder on the part of the licensee which may then be subsisting or have accrued.

Any sums which may at any time be payable by the licensee under the provisions of this license shall be a debt due from the licensee to the people of the United States, and shall be recovered in an appropriate action in the name of the people of the United States against the licensee.

Dated January 21, 1918.

Federal Trade Commission, by L. L. Bracken, Secretary.

Attest: C. H. McDonald, Counsel in Charge.

[fol. 34] Accepted and agreed to.

E. I. du Pont de Nemours and Company, Licensee, by Y. du Pont, Vice-President.

License No. 19

Schedule Annexed to and Forming Part of License No. 19 (Patent) to E. I. Du Pont de Nemours and Company under Letters Patent Concerning Indigo and Its Derivatives

Patent No. 680,395, dated August 13, 1901.

To Johannes Pfleger, of Frankfort-on-the-Main, Germany, assignor to Deutsche Gold & Silber Scheide Anstalt vorm. Roessler, of same place.

For "Process of Making Indoxyl Derivatives."

Patent No. 868,294, dated October 15, 1907.

To Robert Schmidlin, of Hochst-on-the-Main, Germany, assignor to Farbwerke vorm. Meister Lucius & Bruning, of Hochst-on-the-Main, Germany, a corporation of Germany.

For "Process of Producing Phenylglycin and Its Homologues."

Patent No. 718,340, dated January 13, 1903.

To Otto J. Graul, of Ludwigshafen-on-the-Rhine, Germany, assignor to Badische Anilin and Soda Fabrik, of Ludwigshafen-on-the-Rhine, Germany, a corporation of Germany.

For "Process of Making Cyan-Methyl Derivatives of Aromatic Amids."

[fol. 35] EXHIBIT C TO BILL OF COMPLAINT

License No. 19 (Patent)

Revision of Royalty

Pursuant to General Order of the Commission dated September 2, 1919, establishing a uniform rate of royalty under all licenses involving dyes and chemicals (not including drugs), License No. 19, dated January 21, 1918, to E. I. du Pont de Nemours & Company, under certain Letters Patent for intermediates, dyes and the application of dyes, such patents being identified in schedule attached to license, is hereby so amended that from and after August 1, 1919, royalty payable thereunder shall be at the rate of 2% of the gross amounts received by the licensee from the sale of the products included in the license.

Dated January 14, 1920.

Federal Trade Commission, by J. P. Yoder, J. P. Yoder, Secretary. (Seal.)

[fol. 36]

Exhibit D to Bill of Complaint

Seizures of Patents and Instruments of Sale as Recorded in United States Patent Office

Seizure					Sale			
No. of patent	Date of order	Date of record	Liber page		Date of sale	Date of record	Liber page	
680,395	Mar. 22, 1919	Mar. 26, 1919	K-106	417	Apr. 10, 1919	Apr. 21, 1919	Y-107	1
					Mar. 1, 1921	Mar. 3, 1921	Q-112	301
868,294	do.	do.	Z-106	301	do.	do.		do.
718,340	Feb. 3, 1919	Feb. 21, 1919	Y-106	133	do.	do.		do.

[fol. 37] EXHIBIT E TO BILL OF COMPLAINT

License No. 19 (Patent)

Cancellation of License

The Federal Trade Commission pursuant to surrender thereof by the licensee hereby cancels and terminates, subject to the terms of the license, the following license heretofore issued to E. I. du Pont de Nemours & Company, under certain Letters Patent for intermediates, dyes and the application of dyes, such patents being identified in schedule attached to license.

Dated September 1, 1920.

Federal Trade Commission, by J. P. Yoder, J. P. Yoder, Secretary. (Seal.)

[fol. 38] IN UNITED STATES DISTRICT COURT

No. 492

[Title omitted]

BILL OF COMPLAINT—Filed June 30, 1922

The plaintiff for its bill of complaint alleges:

I. That plaintiff, Farbwerke vormals Meister Lucius & Brüning, is and was during all the times hereinafter mentioned a corporation organized under the laws of Germany, having its principal place of business at Hoechst-on-the-Main, Germany.

II. That E. I. du Pont de Nemours & Company, a corporation, hereinafter referred to as the licensee, is and was during all the times hereinafter mentioned a corporation organized under the laws of the State of Delaware, and having its principal place of business in Wilmington, in the State of Delaware and the District of Delaware; and that the defendant, Frank White, is Treasurer of the United States.

III. That this Court has jurisdiction under Section 10f of the Act of Congress known as the "Trading with the

[fol. 39] Enemy Act" approved October 6, 1917, and also because this controversy is between a citizen of Germany and a citizen of the State of Delaware.

IV. That the following United States Letters Patent were duly granted to plaintiff as assignee of the inventor under and in accordance with the provisions of the then existing statutes of the United States and Rules of Practice of the United States Patent Office, and that plaintiff has been ever since the grant of the said letters patent, and is now, the owner theerof, to wit:

No. 868,294—for Process of Producing Phenylglycin and its Homologues, dated Oct. 15, 1907, to Robert Schmidlin of Hœchst-on-the-Main, Germany, assignor to Farbwerke vormals Meister Lucius & Bruning, of Hœchst-on-the-Main, Germany, a corportion of Germany.

V. On information and belief that the Federal Trade Commission under the authority vested in it by the President of the United States, pursuant to the "Trading with the Enemy Act," on January 21, 1918, granted license number 19, to the licensee, to make, use and vend within the United States the invention, described in the said United States Letters Patent; that said license is still in force; that said license required the licensee to pay to the Alien Property Custodian royalties under said license and derived from the sale of the products included in the said licensee and that substantial sums have been paid by the Alien Property Custodian in the Treasury of the United States, as a trust fund for the licensee and for the owner of the said patent, as by said license or duly authenticated copy thereof, ready in Court to be produced, will appear.

[fol. 40] VI. On information and belief, that the licensee thereupon entered upon the use and enjoyment of said license and that substantial sums have been paid by the licensee to the Alien Property Custodian, and deposited by the Alien Property Custodian in the Treasury of the United States, the exact amount being unknown to the plaintiff; and that the licenseee has under said license, made large gains and profits from the manufacture, use and sale of the invention patented by said patent.

VII. That this suit is brought for the recovery from the said licensee for all use and enjoyment of the said pat-

ented invention and to have determined the amount of a reasonable license fee or royalties to be paid by the licensee for the use of said patented invention, and to have an accounting for the same and judgment therefor, and to have an order of the Court directing the Treasurer of the United States to pay to the plaintiff from the fund deposited as aforesaid or by the licensee so far as such deposit will satisfy the said judgment and decree.

Wherefore plaintiff demands that it be adjudged and decreed that the plaintiff is entitled to and do recover from the licensee a reasonable royalty for the use of the said patented invention, to be determined by the Court, and that the Treasurer of the United States be directed to pay to the plaintiff the fund or moneys deposited with him as aforesaid or by the licensee so far as such deposit will satisfy the said judgment, and that plaintiff have judgment against the licensee for any amount of said reasonable license fees or royalties in excess of the funds so deposited by the licensee; that the defendants be decreed to pay the costs of this suit, and that the plaintiff may have [fol. 41] such other and further relief as to this honorable Court may seem meet.

Farbwerke vormals Meister Lucius & Brüning, by (Sgd.) John H. Brickenstein, Attorney in Fact, Washington, D. C. (Sgd.) Chas. F. Curley, (Sgd.) Fraley & Paul, Solicitors for Plaintiff.

In United States District Court

No. 494

[Title omitted]

Bill of Complaint—Filed June 30, 1922

The plaintiff for its bill of complaint alleges:

I. That the plaintiff, Deutsch Gold & Silber Scheide Anstalt vorm. Roessler, is and was during all the times hereinafter mentioned a corporation organized under the laws of Germany, and having its principal place of business at Frankfort-on-the-Main, Germany.

[fol. 42] II. That E. I. du Pont de Nemours & Company, a Corporation, hereinafter referred to as the licensee, is and was during all the times hereinafter mentioned a corporation organized under the laws of the State of Delaware, and having its principal place of business in Wilmington, in the State of Delaware and District of Delaware; and that the defendant, Frank White, is Treasurer of the United States.

III. That this Court has jurisdiction under Section 10f of the Act of Congress known as the "Trading with the Enemy Act" approved October 6, 1917, and also because the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars, and is between a citizen of Germany and a citizen of the State of Delaware.

IV. That the following United States Letters Patent was duly granted to plaintiff as assignee of the respective inventor, under and in accordance with the provisions of the then existing statutes of the United States and Rules of Practice of the United States Patent Office, to wit:

1. No. 680,395, for Process of Making Indigo Derivatives, Johannes Pflyer, Frankfort-on-the-Main, Germany, Assignor to Deutsche Gold & Silber Scheide Anstalt vorm. Roessler, Frankfort-on-the-Main, Germany, dated August 13, 1901.

That the plaintiff has been ever since the grant of the said letters patent, and is now, the owner thereof.

V. That the Federal Trade Commission under the authority vested in it by the President of the United States, pursuant to the "Trading with the Enemy Act," did thereafter grant license number 19 to the licensee, to make, use and vend within the United States the invention described [fol. 43] in the said United States Letters Patent; that said license is still in force; that said license required the licensee to pay to the Alien Property Custodian a royalty derived from the sale of the products included in the said license; that the sums so paid were to be deposited by the Alien Property Custodian in the Treasury of the United States, as a trust fund for the licensee and for the owner of the said patent.

VI. That the licensee thereupon entered upon the use and enjoyment of said license and that the amount paid by the licensee to the Alien Property Custodian, and deposited by the Alien Property Custodian in the Treasury of the United States, and other amounts due and owing by the licensee are in excess of the sum of ten thousand dollars ($10,000), the exact amount being unknown to the plaintiff.

VII. That this suit is brought for the recovery from the said licensee for all use and enjoyment of the said patented invention and to have determined the amount of a reasonable license fee to be paid by the licensee for the use of said patented invention, and to have an order of the Court directing the Treasurer of the United States to pay to the plaintiff from the fund deposited by the licensee such amount as may be necessary to satisfy the said judgment and decree.

Wherefore plaintiff demands that it be adjudged and decreed that the plaintiff is entitled to recover from the licensee a reasonable royalty for the use of the said patented invention, to be determined by the Court, and that the Treasurer of the United States be directed to pay to the plaintiff out of the moneys deposited with him by the licensee such amount as may be necesary to satisfy the said judgment, and that plaintiff have judgment against [fol. 44] the licensee for any amount in excess of the funds so deposited by the licensee; that the defendants be decreed to pay the costs of this suit, and that the plaintiff may have such other and further relief as to this honorable Court may seem meet.

Deutsche Gold & Silber Scheide Antstalt vorm. Roessler, by (Sgd.) Rudolph R. Oppenheim, Attorney in Fact. (Sgd.) Chas. F. Curley, Solicitor for Plaintiff. (Sgd.) Bouvier Caffey Beale, of Counsel.

IN UNITED STATES DISTRICT COURT

No. 495

[Title omitted]

BILL OF COMPLAINT—Filed June 30, 1922

The plaintiff, for its bill of complaint, alleges:

I. That plaintiff, Badische Anilin- & Soda-Fabrik, is and was during all the times hereinafter mentioned, a corporation organized under the laws of Germany, and having its [fol. 45] principal place of business at Ludwigshafen-on-the-Rhine, Germany.

II. On information and belief, that E. I. du Pont de Nemours & Company, hereinafter referred to as the licensee, is and was during all the times hereinafter mentioned, a corporation organized under the laws of the State of Delaware and having its principal place of business in the City of Wilmington, District of Delaware, and that the defendant, Frank White, is Treasurer of the United States.

III. That this Court has jurisdiction under Section 10 of the Act of Congress known as the "Trading with the Enemy Act," approved October 6, 1917, and also because the controversy is between a citizen of Germany and a citizen of the State of Delaware.

IV. That the following United States Letters Patent were duly granted to plaintiff as assignee of the respective inventors, under and in accordance with the provisions of the then existing Statutes of the United States and rules of practice of the United States Patent Office, and that plaintiff has been ever since the grant of the said letters patent, and is now, the owner thereof; to wit:

(1) No. 718,340, for Process of Making Cyan-Methyl Derivatives of Aromatic Amids, dated January 13, 1903, to Otto J. Graul of Ludwigshafen-on-the-Rhine, Germany, assignor to the Badische Anilin- & Soda-Fabrik of Ludwigshafen-on-the-Rhine, Germany, a corporation of Germany.

(2) No. 724,789, for Blue Dye and Process of Making Same, dated April 7, 1903, to Rene Bohn, Mannheim, Ger-

many, assignor to the Badische Anilin- & Soda-Fabrik of [fol. 46] Ludwigshafen-on-the-Rhine, Germany, a corporation of Germany.

(3) No. 739,145, for Anthracene Dye, dated September 15, 1903, to Rene Bohn of Mannheim, Germany, assignor to the Badische Anilin- & Soda-Fabrik of Ludwigshafen-on-the-Rhine Germany, a corporation of Germany.

(4) No. 753,659, for Anthracene Derivative and Process of Making Same, dated March 1, 1904, to Rene Bohn of Mannheim, Germany, assignor to the Badische Anilin- & Soda-Fabrik of Ludwigshafen-on-the-Rhine, Germany, a corporation of Germany.

(5) No. 787,859, for Anthracene Compound and Process of Making Same, dated April 18, 1905, to Roland H. Scholl of Karlsruhe, and Oscar Bally of Mannheim, Germany, Assignors to the Badische Anilin- & Soda-Fabrik of Ludwigshafen-on-the-Rhine, Germany, a corporation of Germany.

(6) No. 796,393, for Anthracene Coloring-Matter and Process of Producing the Same, dated August 1, 1905, to Oscar Bally of Mannheim, Germany, assignor to the Badische Anilin- & Soda-Fabrik of Ludwigshafen-on-the-Rhine, Germany, a corporation of Germany.

(7) No. 818,992, for Anthracene Dye and Process of Making Same, dated April 24, 1906, to Oscar Bally and Max H. Isler of Mannheim, Germany, assignors to the Badische [fol. 47] Anilin- & Soda-Fabrik of Ludwigshafen-on-the-Rhine, Germany, a corporation of Germany.

(8) No. 906,367, for Anthracene Dye and Process of Making Same, dated December 8, 1908, to Oscar Bally of Mannheim and Hugo Wolff of Ludwigshafen-on-the-Rhine, Germany, assignors to the Badische Anilin- & Soda-Fabrik of Ludwigshafen-on-the-Rhine, Germany, a corporation of Germany.

(9) No. 961,612, for Anthracene Compound and Process of Making It, dated June 14, 1910, to Max Henry Isler of Mannheim and Hugo Wolff of Ludwigshafen-on-the-Rhine, Germany, assignors to the Badische Anilin- Soda-Fabrik of Ludwigshafen-on-the-Rhine, Germany, a corporation of Germany.

(10) No. 1,003,268, for Anthracene Dye and Process of Making Same, dated September 12, 1911, to Richard Just and Hugo Wolff of Ludwigshafen-on-the-Rhine, Germany, assignors to the Badische Anilin- & Soda-Fabrik of Ludwigshafen-on-the-Rhine, Germany, a corporation of Germany.

(11) No. 1,055,701, for Pigment and Process of Making the Same, dated March 11, 1913 to Rene Bohn of Mannheim, Germany, assignor to the Badische Anilin- & Soda-Fabrik of Ludwigshafen-on-the-Rhine, Germany, a corporation of Germany.

[fol. 48] (12) No. 1,063,173, for Producing Amino-Anthraquinones and Derivatives Thereof, dated May 27, 1913, to Christian Rampini, deceased, by William E. Warland, administrator, of Brooklyn, New York, assignor to the Badische Anilin- & Soda-Fabrik of Ludwigshafen-on-the-Rhine, Germany, a corporation of Germany.

(13) No. 1,150,863, for Pigment and Making the Same, dated August 24, 1915, to Richard Just of Ludwigshafen-on-the Rhine, Germany and Fritz, Eckhard of Mannheim, Germany, assignors to the Badische Anilin- & Soda-Fabrik of Ludwigshafen-on-the-Rhine, Germany, a corporation of Germany.

V. On information and belief, that the Federal Trade Commission, under the authority vested in it by the President of the United States, pursuant to the "Trading with the Enemy Act", granted licenses to the licensee on January 21, 1918, numbered 18, 18ª, 19 and 20, to make, use and vend within the United States the inventions described in the said United States Letters Patent, and each of them; that said licenses are still in force; that said licenses required the licensee to pay to the Alien Property Custodian royalties under said licenses and derived from the sale of the products included in the said licenses; that the sums so paid were to be deposited by the Alien Property Custodian in the Treasury of the United States, as a trust fund for the licensee and for the owner of the said patents, as by said licenses, or duly authenticated copies thereof, ready in Court to be produced, will appear.

[fol. 49] VI. On information and belief, that the licensee thereupon entered upon the use and enjoyment of said li-

censes; and that substantial sums have been paid by the licensee to the Alien Property Custodian, and deposited by the Alien Property Custodian in the Treasury of the United States, the exact amount being unknown to the plaintiff; and that the licensee has, under said licenses, made large gains and profits from the manufacture, use and sale of the inventions patented by said patents, and each of them.

VII. That this suit is brought for the recovery from the said licensee for all use and enjoyment of the said patented inventions, and to have determined the amount of reasonable license fees or royalties to be paid by the licensee for the use of said patented inventions, and each of them, and to have an accounting of the same and judgment therefor, and to have an order of the Court directing the Treasurer of the United States to pay to the plaintiff the fund deposited as aforesaid or by the licensee so far as such deposit will satisfy the said judgment and decree.

Wherefore plaintiff demands that it be adjudged and decreed that the plaintiff is entitled to and do recover from the licensee reasonable license fees or royalties for the use of the said patented inventions, and each of them, to be determined by the Court, and that the Treasurer of the United States be directed to pay to the plaintiff the fund or moneys deposited with him as aforesaid or by the licensee so far as such deposit will satisfy the said judgment, and that plaintiff have judgment against the licensee for any amount of said reasonable license fees or royalties in excess of the fund so deposited; that the defendants be decreed to pay the costs of this suit, and that the plaintiff may have such [fol. 50] other and further relief as to this Honorable Court may seem meet.

Badische Anilin- & Soda-Fabrik. (Sgd.) Hanns Wagner, (Sgd.) Karl Holdermann, Attorneys-in-fact. (Sgd.) Choate & Curley, Solicitors for Plaintiff. (Sgd.) Livingston Gifford, of Counsel.

IN UNITED STATES DISTRICT COURT

No. 487

[Title omitted]

ANSWER OF E. I. DU PONT DE NEMOURS AND COMPANY—Filed August 11, 1922.

The defendant, E. I. du Pont de Nemours and Company, answering plaintiff's bill of complaint, says:

[fol. 51] I. Defendant admits paragraph I of plaintiff's bill of complaint.

II. Defendant admits paragraph II of plaintiff's bill of complaint.

III. Defendant admits the issuance of United States Letters Patent Nos. 680,395, 868,294 and 718,340, as alleged in paragraph III of plaintiff's bill of complaint, but defendant is without knowledge as to all other allegations and averments of said paragraph of said complaint.

IV. Defendant admits paragraph IV of said complaint.

V. Defendant admits paragraph V of said complaint.

VI. Defendant admits paragraph VI of said complaint.

VII. Defendant admits paragraph VII of said complaint.

VIII. Defendant is without knowledge as to the correctness of the conclusions stated in paragraph VIII of said complaint.

IX. Defendant admits that prior to the first day of September, 1920, it used and employed certain of the inventions included in said License No. 19 and realized divers proceeds from the sale of products included therein, and avers and says that no amount became due or payable by this defendant under said License No. 19 for any use or employment of the inventions included therein prior to April 10, 1919; that between April 10, 1919, and the first day of September, [fol. 52] 1920, there became due and payable from this defendant to the Alien Property Custodian as royalty in accordance with the terms of said license the sum of sixty-one thousand eight hundred and eighty-four dollars and ninety-

eight cents ($61,884.98), which said sum of sixty-one thousand eight hundred and eighty-four dollars and ninety-eight cents ($61,884.98), has heretofore been paid by this defendant to the Alien Property Custodian and by said Alien Property Custodian deposited with the Treasurer of the United States; that the amount so paid is a fair and reasonable royalty for all use made by this defendant of the inventions prior to September 1, 1920.

X. Defendant answering paragraph X of plaintiff's bill of complaint says that it did not, during the existence of said License No. 19, use any of the additional patents referred to in paragraph X of said bill of complaint.

Wherefore the defendant, having fully answered plaintiff's bill of complaint, prays to be dismissed hence with costs.

E. I. du Pont de Nemours and Company, by (Sgd.) Chas. A. Meade, Vice-President. (Sgd.) J. P. Laffey, Solicitor for Defendant, E. I. du Pont de Nemours and Company.

[fol. 53] IN UNITED STATES DISTRICT COURT

No. 487, No. 492, No. 494, No. 495

[Titles omitted]

ORDER OF CONSOLIDATION—Filed October 6, 1927

[fol. 54] And now, to wit, this sixth day of October, A. D. 1927, in pursuance of a stipulation dated February 10, 1923, and this day filed herein; and upon reading and filing the annexed consent of the solicitors of record for the plaintiffs and defendants in all of the above entitled causes, bearing date October 6th, 1927, it is ordered by the Court as follows:

1. That the above entitled suits, The Chemical Foundation, Inc., plaintiff, against E. I. du Pont de Nemours & Company (a corporation) and Frank White, as Treasurer of the United States, defendants, Equity No. 487, Farb-

werke vormals Meister Lucius & Bruning, plaintiff, against E. I. du Pont de Nemours & Company, (a corporation) and Frank White, as Treasurer of the United States, defendants, Equity No. 492, and Deutsche Gold & Silber Scheide Anstalt vorm. Roessler, plaintiff, against E. I. du Pont de Nemours & Company (a corporation) and Frank White, as Treasurer of the United States, defendants, Equity No. 494, in their entirey, and the above entitled suit of Badische Anilin- & Soda-Fabrik, plaintiff, against E. I. du Pont de Nemours & Company and Frank White, as Treasurer of the United States, defendants, Equity No. 495, to the extent of the issues therein relating to Federal Trade Commission License No. 19, be and they hereby are consolidated.

2. That within twenty days from the date hereof each of the parties defendant in the above suits shall file such mo- [fol. 55] tion, answer or other pleading to each of the said Bills of Complaint, as he or it may desire, or if any bill shall have been already pleaded to by him or it, then within said period he or it may amend such pleading to such extent as he or it may deem necessary to meet the situation created by the consolidation.

3. That when the issues have been joined as between all parties to the said causes as consolidated, the Court shall proceed therewith according to law and rules of Court.

(Sgd.) Hugh M. Morris, J.

And now, October 6th, 1927, the undersigned solicitors of record for the complainants and defendants in the above entitled causes, Nos. 487, 492, 494 and 495, in Equity, hereby consent, subject to the approval of the Court, to the entry of the foregoing order of consolidation, without further notice to them or any of them.

(Sgd.) Wm. G. Mahaffy, Solicitor for The Chemical Foundation, Inc. (Sgd.) Wm. S. Hilles, Solicitor for E. I. du Pont de Nemours & Co. (Sgd.) Chas. F. Curley, Solicitor for Farbwerke vormals Meister Lucius & Bruning. (Sgd.) Chas. F. Curley, Solicitor for Deutsche Gold & Silber Scheide Anstalt vorm. Roessler. (Sgd.) Chas F. Curley, Solicitor for Badische Anilin- & Soda-Fabrik. (Sgd.) David J. Reinhardt, Solicitor for Frank White, as Treasurer of the United States.

eight cents ($61,884.98), which said sum of sixty-one thousand eight hundred and eighty-four dollars and ninety-eight cents ($61,884.98), has heretofore been paid by this defendant to the Alien Property Custodian and by said Alien Property Custodian deposited with the Treasurer of the United States; that the amount so paid is a fair and reasonable royalty for all use made by this defendant of the inventions prior to September 1, 1920.

X. Defendant answering paragraph X of plaintiff's bill of complaint says that it did not, during the existence of said License No. 19, use any of the additional patents referred to in paragraph X of said bill of complaint.

Wherefore the defendant, having fully answered plaintiff's bill of complaint, prays to be dismissed hence with costs.

E. I. du Pont de Nemours and Company, by (Sgd.) Chas. A. Meade, Vice-President. (Sgd.) J. P. Laffey, Solicitor for Defendant, E. I. du Pont de Nemours and Company.

[fol. 53] In United States District Court

No. 487, No. 492, No. 494, No. 495

[Titles omitted]

Order of Consolidation—Filed October 6, 1927

[fol. 54] And now, to wit, this sixth day of October, A. D. 1927, in pursuance of a stipulation dated February 10, 1923, and this day filed herein, and upon reading and filing the annexed consent of the solicitors of record for the plaintiffs and defendants in all of the above entitled causes, bearing date October 6th, 1927, it is ordered by the Court as follows:

1. That the above entitled suits, The Chemical Foundation, Inc., plaintiff, against E. I. du Pont de Nemours & Company (a corporation) and Frank White, as Treasurer of the United States, defendants, Equity No. 487, Farb-

werke vormals Meister Lucius & Bruning, plaintiff, against E. I. du Pont de Nemours & Company, (a corporation) and Frank White, as Treasurer of the United States, defendants, Equity No. 492, and Deutsche Gold & Silber Scheide Anstalt vorm. Roessler, plaintiff, against E. I. du Pont de Nemours & Company (a corporation) and Frank White, as Treasurer of the United States, defendants, Equity No. 494, in their entirey, and the above entitled suit of Badische Anilin- & Soda-Fabrik, plaintiff, against E. I. du Pont de Nemours & Company and FrankWhite, as Treasurer of the United States, defendants, Equity No. 495, to the extent of the issues therein relating to Federal Trade Commission License No. 19, be and they hereby are consolidated.

2. That within twenty days from the date hereof each of the parties defendant in the above suits shall file such mo- [fol. 55] tion, answer or other pleading to each of the said Bills of Complaint, as he or it may desire, or if any bill shall have been already pleaded to by him or it, then within said period he or it may amend such pleading to such extent as he or it may deem necessary to meet the situation created by the consolidation.

3. That when the issues have been joined as between all parties to the said causes as consolidated, the Court shall proceed therewith according to law and rules of Court.

(Sgd.) Hugh M. Morris, J.

And now, October 6th, 1927, the undersigned solicitors of record for the complainants and defendants in the above entitled causes, Nos. 487, 492, 494 and 495, in Equity, hereby consent, subject to the approval of the Court, to the entry of the foregoing order of consolidation, without further notice to them or any of them.

(Sgd.) Wm. G. Mahaffy, Solicitor for The Chemical Foundation, Inc. (Sgd.) Wm. S. Hilles, Solicitor for E. I. du Pont de Nemours & Co. (Sgd.) Chas. F. Curley, Solicitor for Farbwerke vormals Meister Lucius & Bruning. (Sgd.) Chas. F. Curley, Solicitor for Deutsche Gold & Silber Scheide Anstalt vorm. Roessler. (Sgd.) Chas F. Curley, Solicitor for Badische Anilin- & Soda-Fabrik. (Sgd.) David J. Reinhardt, Solicitor for Frank White, as Treasurer of the United States.

[fol. 56] IN UNITED STATES DISTRICT COURT

No. 487

[Title omitted]

MOTION TO DISMISS AND ANSWER OF FRANK WHITE AS TREASURER OF UNITED STATES—Filed November 9, 1927

I

Motion to Dismiss

Now comes the defendant, Frank White, as Treasurer of the United States, and moves to dismiss the bill of complaint, and as grounds for the said motion assigns the following:

(1) It appears affirmatively from the allegations of the bill of complaint that the plaintiff herein is not the owner of the patent mentioned in the bill of complaint, and to use which a license was granted by the Federal Trade Commission under the provisions of Section 10 of the Trading with the Enemy Act within the meaning of the word "owner" as used in Sub-section (f) of Section 10 of the Trading with the Enemy Act as amended.

(2) The plaintiff has not stated facts sufficient to entitle it to equitable relief under Section 10 of the Trading with the Enemy Act as amended.

[fol. 57] II

Answer

And now not waiving the many defects and insufficiencies of the bill of complaint, but insisting upon each and all of the objections thereto hereinbefore set forth, this defendant for his answer to the bill of complaint says:

(1) Answering the averments of paragraph numbered I of the bill of the complaint this defendant admits that Frank White is Treasurer of the United States.

Further answering said paragraph this defendant says that he is without knowledge with respect to the other sep-

arate and several allegations thereof, and therefore demands strict proof thereof.

(2) The averments of paragraph numbered II of the bill of complaint are conclusions of law which this defendant is not required to answer.

(3) This defendant is without knowledge as to the averments of paragraph numbered III of the bill of complaint, and therefore demands strict proof thereof.

(4-5-6-7) This defendant admits the averments of paragraphs numbered IV, V, VI and VII of the bill of complaint.

(8) Answering the averments of paragraph numbered VIII of the bill of complaint this defendant admits that the Alien Property Custodian assigned said letters patent to the plaintiff on or about the dates mentioned in Exhibit D to the bill of complaint, but this defendant denies that [fol. 58] the plaintiff herein is the "owner" of said letters patent within the meaning of Section 10 of the Trading with the Enemy Act.

(9) Answering the averments of paragraph numbered IX of the bill of complaint this defendant says that there was paid to the Alien Property Custodian as royalties under said License No. 19 upon the said three patents by the defendant, the E. I. du Pont de Nemours & Company, the sum of $61,884.98, which was by the Alien Property Custodian paid into the Treasury of the United States, pursuant to the provisions of Section 10 of the Trading with the Enemy Act. This defendant is without knowledge as to what portion of said money represents royalties upon any one of the said patents covered by the said license.

Further answering the said paragraph this defendant says that he is without knowledge as to the other separate and several allegations of said paragraph and therefore demands strict proof thereof.

(10) He is without knowledge as to the averments of paragraph numbered X of the bill of complaint, and therefore demands strict proof thereof.

Wherefore, having fully answered the bill of complaint, this defendant prays that he may be dismissed with his

costs in this behalf expended, and for such other and further relief to which in the premises he may be entitled.

(Sgd.) Leonard E. Wales, United States Attorney, Attorney for Frank White, as Treasurer of the United States, Defendant.

[fol. 59] IN UNITED STATES DISTRICT COURT

No. 492

[Title omitted]

ANSWER OF FRANK WHITE AS TREASURER OF THE UNITED STATES—Filed November 9, 1927

And now not waiving the many defects and insufficiences of the bill of complaint, but insisting upon each and all of the objections thereto hereinbefore set forth, this defendant for his answer to the bill of complaint says:

(1-2) He is without knowledge as to the averments of paragraphs numbered I and II of the bill of complaint, and therefore demands strict proof thereof.

(3) The averments of paragraph numbered III of the bill of complaint are conclusions of law which this defendant is not required to answer.

(4) This defendant is without knowledge as to the averments of paragraph numbered IV of the bill of complaint, and therefore demands strict proof thereof.

[fol. 60] (5-6) Answering the averments of paragraphs numbered V and VI of the bill of complaint, this defendant admits that on or about the twenty-first day of January, 1918, Federal Trade Commission License No. 19 for the use of Patent No. 868,294 was issued to the defendant, E. I. du Pont de Nemours & Company, and that the royalty fixed by the Commission as a reasonable royalty to be paid by the said defendant was 5 per cent. of the net profits derived from the sale of the product covered by the said license. Said license granted to the defendant permission to use two other patents in addition to the patent involved in this suit, namely, Patent No. 680,395, and Patent No. 718,340.

The amount paid to the Alien Property Custodian as royalties under the said license for the use of the said three patents amounted to approximately $61,884.98, and the said money was deposited in the Treasury of the United States. This defendant is without knowledge as to what portion of said money represented royalties paid for the use of Patent No. 680,395. Said license was cancelled by the Federal Trade Commission on September 1, 1920.

Further answering the said paragraphs this defendant says that he is without knowledge as to all the other separate and several allegations thereof, and therefore demands strict proof thereof.

(7) This defendant is without knowledge as to the averments of paragraph numbered VII of the bill of complaint, and therefore demands strict proof thereof.

For further defense to the allegations of the bill of complaint this defendant says:

(8) On or about the twenty-second day of March, 1919, the Alien Property Custodian, after investigation, determined that the plaintiff, the Farbwerke yormals Meister [fol. 61] Lucius & Bruning was an enemy, and that Patent No. 868,294 was owned by, and held for, by, on account of, and for the benefit of the said enemy. Thereupon the Alien Property Custodian seized the said patent subject to the rights of the defendant, the E. I. du Pont de Nemours & Company and H. A. Metz Laboratories, Inc., and subject to the said rights, required said patent to be conveyed, transferred, assigned, and delivered to him. Thereafter and on or about the twenty-sixth day of March, 1919, the Acting Commissioner of Patents accepted the certificates of the seizure and demand of the Alien Property Custodian, and on the same date the Commissioner of Patents received and recorded said seizure in Liber Z-106, page 301 of the Transfers of Patents.

(9) On or about the tenth day of April, 1919, the Alien Property Custodian assigned the said patent to the Chemical Foundation, Inc.

Wherefore, having fully answered the bill of complaint this defendant prays that he may be dismissed with his

costs in this behalf expended, and for such other and further relief to which in the premises he may be justly entitled.

(Sgd.) Leonard E. Wales, United States Attorney, Attorney for Frank White, as Treasurer of the United States, Defendant.

[fol. 62] IN UNITED STATES DISTRICT COURT

No. 492

[Title omitted]

MOTION TO DISMISS AND ANSWER OF E. I. DU PONT DE NEMOURS & COMPANY—Filed January 16, 1928

I

Motion to Dismiss

Now comes the defendant, E. I. du Pont de Nemours & Company, and moves to dismiss the bill of complaint, and as grounds for said motion assigns the following:

I. It appears affirmatively from the allegations of the bill of complaint that the plaintiff herein is not the owner of any of the United States Letters Patent under which a license has been granted to this defendant under the provisions of Section 10 of the "Trading with the Enemy Act" within the meaning of the word "owner" as used in Section 10 (f) of the "Trading with the Enemy Act" as amended.

[fol. 63] II. The plaintiff has not stated facts sufficient to entitle it to equitable relief under Section 10 of the "Trading with the Enemy Act."

II

Answer

This defendant now and at all times hereafter saving and reserving to itself all and all manner of benefits and advantages of exceptions which may be had or taken to the many errors, uncertainties, imperfections and insuffi-

ciencies in the plaintiff's said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised that it is material or necessary for it to make answer unto, answering, says:

I. This defendant is without knowledge as to the allegations of paragraph I of said bill of complaint.

II. This defendant admits paragraph II of said bill of complaint.

III. This defendant answering paragraph III of said bill of complaint admits that the plaintiff is a citizen of Germany and that this defendant is a citizen of the State of Delaware, but this defendant denies that this diversity of citizenship confers jurisdiction on this court in this suit.

IV. This defendant is without knowledge as to the truth of the allegations contained in paragraph IV of said bill of complaint that the United States Letters Patent mentioned and described in said paragraph were granted to plaintiff as assignee of the inventor under and in accordance with the provisions of the then existing statutes of the United [fol. 64] States and rules of practice of the United States Patent Office. This defendant denies that plaintiff has been ever since the grant of letters patent and is now the owner thereof, and upon information and belief avers the fact to be that the plaintiff has not since the tenth day of April, 1919, been the owner of any interest in the United States Letters Patent mentioned and described in paragraph IV of the bill of complaint.

V. This defendant admits that the Federal Trade Commission under the authority vested in it by the President of the United States, pursuant to the "Trading with the Enemy Act," did, to wit, on the twenty-first day of January, 1918, grant to this defendant, by License No. 19, a license, among others, to make, use and vend within the United States the alleged invention described in United States Letters Patent No. 868,294. This defendant denies that said License No. 19 is still in force. This defendant admits that said License No. 19 required it, as licensee, to pay to the Alien Property Custodian royalties under said license, to wit, a royalty of five per cent (5%) of the net profits derived from the sale of products included in said

license, which said amount the Federal Trade Commission determined to be a reasonable royalty and the aggregate royalty to be paid by the licensee under all the letters patent included in said License No. 19.

VI. This defendant admits that after the granting of the Federal Trade Commission License No. 19 this defendant used to a certain extent the invention covered by United States Letters Patent No. 868,294, and that this defendant has paid to the Alien Property Custodian all the royalties tha became due and payable under the terms of said license. Upon information and belief this defendant avers [fol. 65] that the plaintiff has no right or lawful authority to recover the amount so paid by this defendant. This defendant denies that it has made large gains and profits from the manufacture, use and sale of the invention covered by said United States Letters Patent No. 868,294.

VII. This defendant answering paragraph VII of plaintiff's bill of complaint says that it is obvious that the plaintiff is seeking to recover from this defendant for all use and enjoyment of said invention and to have an order of the Court directing the Treasurer of the United States to pay to plaintiff from funds deposited by the licensee such amount as may be necessary to satisfy the said judgment. Upon information and belief this defendant says that the plaintiff has no right or lawful authority to recover for such use as this defendant made of said invention.

Wherefore this defendant, having fully answered the said bill of complaint in so far as it is advised it is material and necessary to be answered unto, denies that said plaintiff is entitled to the relief or any part thereof in the said bill of complaint demanded, or any relief whatsoever, and prays to be hence dismissed with its reasonable charges and costs in its behalf most wrongfully sustained.

E. I. du Pont de Nemours & Company, by (Sgd.) J. P. Laffey, Vice-President. (Sgd.) J. P. Laffey, (Sgd.) Wm. S. Hilles, Solicitors for Defendant, E. I. du Pont de Nemours & Company.

[fol. 66] IN UNITED STATES DISTRICT COURT

No. 492

[Title omitted]

MOTION FOR SUBSTITUTION OF HOWARD SUTHERLAND, AS ALIEN PROPERTY CUSTODIAN, AS PLAINTIFF—Filed April 28, 1928

Now comes Howard Sutherland, as Alien Property Custodian, by his solicitor, and moves that he be substituted as plaintiff in the above case for and instead of Farbwerke vormals Meister Lucius & Bruning, and assigns as his reasons therefor the following:

(1) That by virtue of the seizure by the Alien Property Custodian during the period of the recent war, of Letters Patent No. 868,294 entitled "Process of Producing Phenylglycin and its Homologues," the Alien Property Custodian became the owner thereof and by reason of such seizure said Alien Property Custodian was the only person authorized to bring a suit within one year after the end of the war, as provided in Section 10 (f) of the Trading [fol. 67] with the Enemy Act, as amended, to recover from E. I. du Pont de Nemours & Company, the licensee of the Federal Trade Commission, and from Frank White, as Treasurer of the United States, a reasonable royalty for the use and enjoyment of said patent.

(2) That by reason of Section 19 of the Settlement of War Claims Act of 1928, approved March 10, 1928, the Alien Property Custodian is entitled to be substituted as plaintiff in this case for and instead of Farbwerke vormals Meister Lucius & Bruning.

(3) There is attached hereto and made a part hereof the affidavit of Howard Sutherland, the Alien Property Custodian, in which he states that the Alien Property Custodian duly seized the aforesaid Letters Patent No. 868,294, on March 26, 1919.

(Sgd.) Leonard E. Wales, United States Attorney, Solicitor for Howard Sutherland, as Alien Property Custodian.

Copy of this motion served on the attorney for the plaintiff, Farbwerke vormals Meister Lucius & Bruning, the twenty-eighth day of April, 1928.

[fol. 68] CITY OF WASHINGTON,
District of Columbia, ss:

Howard Sutherland, being first duly sworn, deposes and says:

I am Alien Property Custodian of the United States of America. The records of my office show that on or about the twenty-second day of March, 1919, A. Mitchell Palmer, the then Alien Property Custodian, after investigation, determined that Farbwerke vormals Meister Lucius & Bruning was an enemy not holding a license granted by the President, and that patent No. 868,294 was owned by and held for, by, on account of, and for the benefit of said enemy. Thereupon the Alien Property Custodian seized the said patent and required that it be conveyed, transferred, assigned, and delivered to him. Thereafter on March 26, 1919, the Acting Commissioner of Patents accepted service of the seizure and demand of the Alien Property Custodian, and on the same date the Commissioner of Patents received and recorded said seizure of said patent in Liber Z-106, page 301, of the Transfers of Patents. On or about the tenth day of April, 1919, the Alien Property Custodian assigned said patent to the Chemical Foundation, Inc.

(Sgd.) Howard Sutherland.

Subscribed and sworn to before me this twenty-sevénth day of April, 1928. (Sgd.) Sophie D. Hillman, Notary Public, D. C. My commission expires November 5, 1931. (Seal.)

[fol. 69] IN UNITED STATES DISTRICT COURT

No. 494

[Title omitted]

ANSWER OF FRANK WHITE, AS TREASURER OF THE UNITED STATES—Filed November 9, 1927

And now not waiving the many defects and insufficiencies of the bill of complaint, but insisting upon each and

all of the objections thereto hereinbefore set forth, this defendant for his answer to the bill of complaint says:

(1-2) He is without knowledge as to the averments of paragraphs numbered I and II of the bill of complaint, and therefore demands strict proof thereof.

(3) The averments of paragraph numbered III of the bill of complaint are statements of law which this defendant is not required to answer.

(4) This defendant is without knowledge as to the averments of paragraph numbered IV of the bill of complaint, [fol. 70] and therefore demands strict proof thereof.

(5-6) Answering the averments of paragraphs numbered V and VI of the bill of complaint this defendant admits that on or about the twenty-first day of January, 1918, Federal Trade Commission License No. 19 for the use of Patent No. 680,395 was issued to the defendant, E. I. du Pont de Nemours & Company, and that the royalty fixed by the said Commission as a reasonable royalty to be paid by the said defendant was 5 per cent. of the net profits received from the sale of the product covered by the said license. under date of January 14, 1920, the royalty required to be paid under this license was reduced from 5 per cent. of the net profits to 2 per cent. of the gross amount received from the sale of said product. Said license granted to the defendant permission to use two other patents in addition to the patent involved in this suit, namely, Patent No. 718,340 and Patent No. 868,294. The amount paid to the Alien Property Custodian as royalties under the said license for the use of the said three patents amounted to approximately $61,884.98, and the said money was deposited in the Treasury of the United States. This defendant is without knowledge as to what portion of said money represented royalties paid for the use of Patent No. 680,395. Said license was cancelled by the Federal Trade Commission on September 1, 1920.

Further answering the said paragraphs this defendant says that he is without knowledge as to all the other separate and several allegations thereof, and therefore demands strict proof thereof.

(7) This defendant is without knowledge as to the averments of paragraph numbered VII of the bill of complaint, and therefore demands strict proof thereof.

[fol. 71] For further defense to the allegations of the bill of complaint this defendant says:

(8) On or about March 22, 1919, the Alien Property Custodian, after inv-stigation, determined that the plaintiff, Deutsche Gold & Silber Scheide Anstalt vorm. Roessler, of Frankfort-on-the-Main, Germany, was an enemy, and that Patent No. 680,395 was owned by and held for, by, on account of, and for the benefit of the said enemy. Thereupon the Alien Property Custodian seized the said patent and required the same to be conveyed, transferred, assigned, and delivered to him. On or about the twenty-sixth day of March, 1919, the Acting Commissioner of Patents acknowledged service of the said requirement and seizure of the Alien Property Custodian and on the same date the Commissioner of Patents certified that the seizure of the said patent had been duly recorded in Liber K-106, page 417 of the Transfers of Patents.

(9) On or about the tenth day of April, 1919, the said patent was by the Alien Property Custodian assigned to the Chemical Foundation, Inc.

Wherefore this defendant having fully answered the bill of complaint prays that he be dismissed with his costs in this behalf expended, and for such other and further relief to which in the premises he may be entitled.

(Sgd.) Leonard E. Wales, United States Attorney,
Attorney for Frank White, as Treasurer of the
United States, Defendant.

[fol. 72] IN UNITED STATES DISTRICT COURT

No. 494

[Title omitted]

MOTION TO DISMISS AND ANSWER OF E. I. DU PONT DE NEMOURS & COMPANY—Filed January 16, 1928

I

Motion to Dismiss

Now comes the defendant, E. I. du Pont de Nemours & Company, and moves to dismiss the bill of complaint, and as grounds for said motion assigns the following:

I. It appears affirmatively from the allegations of the bill of complaint that the plaintiff herein is not the owner of any of the United States Letters Patent under which a license has been granted to this defendant under the provisions of Section 10 of the "Trading with the Enemy Act" within the meaning of the word "owner" as used in Section 10 (f) of the "Trading with the Enemy Act" as amended.

[fol. 73] II. The plaintiff has not stated facts sufficient to entitled it to equitable relief under Section 10 of the "Trading with the Enemy Act."

II

Answer

This defendant now and at all times hereafter saving and reserving to itself all and all manner of benefits and advantages of exception which may be had or taken to the many errors, uncertainties, imperfections and insufficiencies in the plaintiff's said bill of complaint contained, for answer thereunto, or unto so much or such parts hereof as this defendant is advised that it is material or necessary for it to make answer unto, answering, says:

I. This defendant is without knowledge as to the allegations of paragraph I of said bill of complaint.

II. This defendant admits paragraph II of said bill of complaint.

II-. This defendant answering paragraph III of said bill of complaint admits that the plaintiff is a citizen of Germany and that the defendant is a citizen of the State of Delaware, but this defendant expressly denies that the amount in controversy in this suit exceeds, exclusive of interest and costs, the sum or value of three thousand dollars.

IV. This defendant is without knowledge as to the truth of the matters and things stated and contained in paragraph IV of said bill of complaint.

V. This defendant admits that the Federal Trade Commission under the authority vested in it by the President of the United States, pursuant to the "Trading with the Enemy Act," did, to wit, on the twenty-first day of Janu- [fol. 74] ary, 1918, grant to this defendant, by License No. 19, a license, among others, to make, use and vend within the United States the alleged invention described in United States Letters Patent No. 680,395. This defendant denies that said license is still in force, and avers the fact to be that said license expired when the patent expired, to wit, on the thirteenth day of August, 1918. This defendant avers the facts to be that said License No. 19 included in addition to United States Letters Patent No. 680,395 a non-exclusive license to use United States Letters Patent No. 868,294, issued October 15, 1907, and United States Letters Patent No. 718,340, issued January 13, 1903, all relating to the manufacture of indigo, which said license required and obligated the defendant to pay to the Alien Property Custodian a royalty of five per cent. (5%) of the net profit derived from the sale of products included in said License No. 19, which said amount the Federal Trade Commission determined to be a reasonable royalty and the aggregate royalty to be paid by the licensee under all the letters patent included in said license. This defendant denies that any royalties for the use by this defendant of United States Letters Patent No. 680,395 ever became due and payable from this defendant to the Alien Property Custodian under the terms of said License No. 19, as aforesaid, and defendant avers and says that no royalties were paid by this de-

fendant under the terms of said license to the Alien Property Custodian.

VI. This defendant admits that between the twenty-first day of January, 1918, and the thirteenth day of August, 1918, the defendant used to a very limited amount the alleged invention described in United States Letters Patent No. 680,395, but denies that this defendant paid to the Alien Property Custodian any amount whatever for the [fol. 75] use made by this defendant of said invention, for the reason that under the terms of its said license no amount became due and payable.

VII. This defendant, answering paragraph VII of plaintiff's bill of complaint, says it is obvious that the plaintiff is seeking the recovery from this defendant for all use and enjoyment of said invention, and to have an order of the Court directing the Treasurer of the United States to pay to plaintiff from funds deposited by the licensee such amount as may be necessary to satisfy the said judgment, but this defendant says it is without knowledge as to the right of the plaintiff to recover for such use as this defendant made of said invention between the dates aforesaid, and further says that no royalties became due from this defendant to the Alien Property Custodian under the terms of said License No. 19 on account of the use by defendant as aforesaid of the invention contained in United States Letters Patent No. 680,395.

Wherefore this defendant, having fully answered the said bill of complaint in so far as it is advised it is material and necessary to be answered unto, denies that said plaintiff is entitled to the relief or any part thereof in the said bill of complaint demanded, or any relief whatsoever, and prays to be hence dismissed with its reasonable charges and costs in its behalf most wrongfully sustained.

E. I. du Pont de Nemours & Company, by (Sdg.) J. P. Laffey, Vice-President. (Sgd.) J. P. Laffey, (Sgd.) Wm. S. Hilles, Solicitors for Defendant, E. I. du Pont de Nemours & Company.

[fol. 76] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR SUBSTITUTION OF HOWARD SUTHERLAND, AS ALIEN PROPERTY CUSTODIAN, AS PLAINTIFF—Filed April 28, 1928

Now comes Howard Sutherland, as Alien Property Custodian, by his solicitor, and moves that he be substituted as plaintiff in the above case for and instead of Deutsche Gold & Silber Scheide Anstalt vorm. Roessler, and assigns as his reasons therefor the following:

(1) That by virtue of the seizure by the Alien Property Custodian during the period of the recent war, of Letters Patent No. 680,395 entitled "Process of Making Indoxyl derivatives," the Alien Property Custodian became the owner thereof and by reason of such seizure said Alien Property Custodian was the only person authorized to bring a suit within one year after the end of the war, as provided in Section 10 (f) of the Trading with the Enemy Act, as amended, to recover from E. I. du Pont de Nemours & Com-
[fol. 77] pany, the licensee of the Federal Trade Commission, and from Frank White, as Treasurer of the United States, a reasonable royalty for the use and enjoyment of said patent.

(2) That by reason of Section 19 of the Settlement of War Claims Act of 1928, approved March 10, 1928, the Alien Property Custodian is entitled to be substituted as plaintiff in this case for and instead of Deutsche Gold & Silber Scheide Anstalt vorm. Roessler,

(3) There is attached hereto and made a part hereof the affidavit of Howard Sutherland, the Alien Property Custodian, in which he states that the Alien Property Custodian duly seized the aforesaid Letters Patent No. 680,395 on March 26, 1919.

(Sgd.) Leonard E. Wales, United States Attorney, Solicitor for Howard Sutherland, as Alien Property Custodian.

Copy of this motion served on the attorney for the plaintiff, Deutsche Gold & Silber Scheide Anstalt vorm. Roessler, this 28th day of April, 1928.

[fol. 78] CITY OF WASHINGTON,
District of Columbia, ss:

Howard Sutherland, being first duly sworn, deposes and says:

I am Alien Property Custodian of the United States of America. The records of my office show that on or about the 22nd day of March, 1919, A. Mitchell Palmer, the then Alien Property Custodian, after investigation, determined that Dentsche Gold & Silber Scheide Anstalt vorm. Roesler was an enemy not holding a license granted by the President, and that Patent No. 680,395 was owned by and held for, by, on account of, and for the benefit of said enemy. Thereupon the Alien Property Custodian seized the said patent and required that it be conveyed, transferred, assigned, and delivered to him. Thereafter on March 26, 1919, the Acting Commissioner of Patents accepted service of the seizure and demand of the Alien Property Custodian, and on the same date the Commissioner of Patents received and recorded said seizure of said patent in Liber K-106, page 417, of the Transfers of Patents. On or about the 10th day of April, 1919, the Alien Property Custodian assigned said patent to the Chemical Foundation, Inc.

(Sgd.) Howard Sutherland.

Subscribed and sworn to before me this 27th day of April, 1928. (Sgd.) Sophie D. Hillman, Notary Public, D. C. My commission expires November 5, 1931. (Seal.)

[fol. 79] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF FRANK WHITE, AS TREASURER OF THE UNITED STATES—Filed November 9, 1927

And now not waiving the many defects and insufficiencies of the bill of complaint, but insisting upon each and all of the objections thereto hereinbefore set forth, this defendant for his answer to the bill of complaint says:

(1-2) He is without knowledge as to the averments of paragraphs numbered I and II of the bill of complaint, and therefore demands strict proof thereof.

(3) The averments of paragraph numbered III of the bill of complaint are conclusions of law which this defendant is not required to answer.

(4) This defendant is without knowledge as to the averments of paragraph numbered IV of the bill of complaint, and therefore demands strict proof thereof.

(5-6) Answering the averments of paragraphs numbered V and VI of the bill of complaint this defendant says [fol. 80] that on or about the 21st day of January, 1918, the Federal Trade Commission issued License No. 18 to E. I. du Pont de Nemours & Company to use the following patents:

No. 724,789.
No. 739,145.
No. 753,659.
No. 787,859.
No. 796,393.
No. 818,992.
No. 906,367.
No. 961,612.
No. 1,003,268.
No. 1,055,701.
No. 1,063,173.
No. 1,150,863.

The royalties fixed by the said Commission to be paid by the said defendant were 5 per cent of the net profit derived from the sale of products manufactured pursuant to said license. On or about the 14th day of January, 1920, the Federal Trade Commission reduced the amount of said royalties to 2 per cent of the gross amount received by the said defendant from the manufacture and sale of products under said license. There was paid to the Alien Property Custodian and by him deposited in the Treasury of the United States as royalties under said license No. 18, the sum of $10,103.88.

Further answering said paragraph these defendants say that on or about the 21st day of January, 1918, the Federal Trade Commission issued to the defendant, E. I. du Pont de Nemours & Company, license No. 19, covering Patent No. 718,340 as well as Patent No. 680,395 and Patent No. 868,294. Said licenses require the said defendant to pay

to the Alien Property Custodian as royalties 5 per cent of the net profit derived from the sale of the products included in said license. There was paid to the Alien Property Custodian as royalties under the said license upon the said three patents and by the Alien Property Custodian deposited in the Treasury of the United States, the sum of $61,884.98. This defendant is without knowledge as to [fol. 81] what portion of said royalties accrued and was paid for the use of each patent separately. Said licenses were cancelled by the Federal Trade Commission on September 1, 1920.

Further answering said paragraph these defendants say that no royalties were ever paid to the Alien Property Custodian under Licenses Nos. 18-a and 20.

(7) This defendant is without knowledge as to the averments of paragraph numbered VII of the bill of complaint, and therefore demands strict proof thereof.

For further defense to the allegations of the bill of complaint this defendant says:

(8) On or about the 3rd day of February, 1919, the Alien Property Custodian after investigation determined that the Badische Anilin & Soda Fabrik, of Ludwigshafen-am-Rhine, was an enemy, and that Patents Nos. 724,789, 739,145, 753,659, 787,859, 796,393, 818,992, 906,367, 961,612, 1,003,268, 1,055,701, 1,063,173, and 1,150,863 were owned by and held for, by, on account of, and for the benefit of the said enemy. Thereupon the Alien Property Custodian seized said patents and required the same to be conveyed, transferred, assigned and delivered to him. On or about the 21st day of February, 1919, the Commissioner of Patents accepted service of the said seizure and demand of the Alien Property Custodian and the same was recorded in Liber Y-106, page 133, of the Transfers of Patents.

(9) On or about the 10th day of April, 1919, said patents were assigned by the Alien Property Custodian to the Chemical Foundation, Inc.

(10) On or about the 3rd day of February, 1919, the Alien Property Custodian, after investigation, determined [fol. 82] that the Badische Anilin & Soda Fabrik, of Ludwigshafen-am-Rhine, was an enemy, and that Patent No. 718,340, was owned by, and held for, by, on account of, and

for the benefit of the said enemy. Thereupon the Alien Property Custodian seized the said patent and required the same to be conveyed, transfered, assigned and deliverd to him. On or about the 21st day of February, 1919, the Commissioner of Patents accepted service of the said seizure and demand and the same was recorded in Liber Y-106, page 133, of the Transfers of Patents.

(11) On or about the 10th day of April, 1919, the said patent was assigned by the Alien Property Custodian to the Chemical Foundation, Inc.

Wherefore, having fully answered the bill of complaint this defendant prays that he may be dismissed with his costs in this behalf expended, and for such other and further relief to which in the premises he may be justly entitled.

(Sgd.) Leonard E. Wales, United States Attorney,
Attorney for Frank White, as Treasurer of the
United States, Defendant.

[fol. 83] IN UNITED STATES DISTRICT COURT

No. 495

[Title omitted]

MOTION TO DISMISS AND ANSWER OF E. I. DU PONT DE NEMOURS & COMPANY—Filed January 16, 1928

I

Motion to Dismiss

Now comes the defendant, E. I. du Pont de Nemours & Company, and moves to dismiss the bill of complaint, and as grounds for said motion assigns the following:

I. It appears affirmatively from the allegations of the bill of complaint that the plaintiff herein is not the owner of any of the United States Letters Patent under which a license has been granted to this defendant under the provisions of Section 10 of the "Trading with the Enemy Act"

within the meaning of the word "owner" as used in Section 10 (f) of the "Trading with the Enemy Act" as amended.

II. The plaintiff has not stated facts sufficient to entitle it to equitable relief under Section 10 of the "Trading with the Enemy Act."

[fol. 84]

II

Answer

This defendant now and at all times hereafter saving and reserving to itself all and all manner of benefits and advantages of exceptions which may be had or taken to the many errors, uncertainties, imperfections and insufficiencies in the plaintiff's said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised that it is material or necessary for it to make answer unto, answering, says:

I. This defendant is without knowledge as to the allegations of Paragraph I of said bill of complaint.

II. This defendant admits Paragraph II of said bill of complaint.

III. This defendant answering Paragraph III of said bill of complaint admits that the plaintiff is a citizen of Germany and the defendant is a citizen of the State of Delaware, but this defendant denies that this diversity of citizenship confers jurisdiction on this Court in this suit.

IV. This defendant is without knowledge as to the truth of the allegations contained in Paragraph IV of said bill of Complaint that the United States Letters Patent mentioned and described in said paragraph were granted to plaintiff as assignee of the respective inventors under and in accordance with the provisions of the then existing statutes of the United States and rules of practice of the United States Patent Office. This defendant denies that plaintiff has been ever since the grant of letters patent and is now the owner thereof, and upon information and belief [fol. 85] avers the fact to be that the plaintiff has not since the tenth day of April, 1919, been the owner of any interest

in the United States Letters Patent mentioned and described in paragraph IV of the bill of complaint.

V. This defendant admits that the Federal Trade Commission under authority vested in it by the President of the United States, pursuant to the "Trading with the Enemy Act," did on the twenty-first day of January, 1918, grant to this defendant, by Licenses No. 18 and No. 19, licenses to make, use and vend within the United States the alleged inventions described in the United States Letters Patent enumerated in Paragraph IV of said bill of complaint. This defendant denies that said licenses are still in force. This defendant says that said Licenses No. 18 and No. 19 obligated the licensee to pay to the Alien Property Custodian a royalty of five per cent. (5%) of the net profit derived from the sale of products included in said Licenses No. 18 and No. 19, which said amount the Federal Trade Commission determined to be a reasonable royalty and the aggregate royalty to be paid by the licensee under all the letters patent included in said licenses.

VI. This defendant admits that after the granting of the Federal Trade Commission Licenses No. 18 and No. 19 this defendant used certain of the inventions covered by some of the United States Letters Patent enumerated in Paragraph IV of the bill of complaint, and that defendant has paid to the Alien Property Custodian all the royalties that became due and payable under the terms of said licenses. Upon information and belief this defendant avers that the plaintiff has no right or lawful authority to recover the amount so paid by this defendant. This defendant denies [fol. 86] that it has made large gains and profits from the manufacture, use and sale of the inventions covered by said letters patent, or any of them.

VII. This defendant answering Paragraph VII of plaintiff's bill of complaint says it is obvious that the plaintiff is seeking to recover from this defendant for all use and enjoyment of said inventions, and to have an order of the Court directing the Treasurer of the United States to pay to plaintiff from funds deposited by the licensee such amount as may be necessary to satisfy the said judgment. Upon information and belief this defendant says that the plaintiff has no right or lawful authority to recover for such use as this defendant made of said inventions.

Wherefore this defendant, having fully answered the said bill of complaint in so far as it is advised it is material and necessary to be answered unto, denies that said plaintiff is entitled to the relief or any part thereof in the said bill of complaint demanded, or any relief whatsoever, and prays to be hence dismissed with its reasonable charges and costs in its behalf most wrongfully sustained.

E. I. du Pont de Nemours & Company, by (Sgd.) J. P. Laffey, Vice President. (Sgd.) J. P. Laffey, (Sgd.) Wm. S. Hiiles, Solicitors for Defendant E. I. du Pont de Nemours & Company

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[fol. 87] IN UNITED STATES DISTRICT COURT

No. 495

[Title omitted]

MOTION FOR SUBSTITUTION OF HOWARD SUTHERLAND, AS ALIEN PROPERTY CUSTODIAN, AS PLAINTIFF—Filed April 28, 1928

Now comes Howard Sutherland, as Alien Property Custodian, by his solicitor, and moves that he be substituted as plaintiff in the above case for and instead of the Badische Anilin & Soda Fabrik, and assigns as his reasons therefor the following:

(1) That by virtue of the seizure by the Alien Property Custodian during the period of the recent war, of Letters Patent No. 718,340, entitled "Process of Making Cyan-Methyl Derivatives of Aromatic Amids," the Alien Property Custodian became the owner thereof and by reason of such seizure said Alien Property Custodian was the only person authorized to bring a suit within one year after the end of the war as provided in Section 10 (f) of the Trading with the Enemy Act, as amended, to recover from E. I. du [fol. 88] Pont de Nemours & Company, the licensee of the Federal Trade Commission, and from Frank White, as Treasurer of the United States, a reasonable royalty for the use and enjoyment of said patent.

(2) That by reason of Section 19 of the Settlement of War Claims Act of 1928, approved March 10, 1928, the Alien Property Custodian is entitled to be substituted as plaintiff in this case for and instead of Badische Anilin & Soda Fabrik.

(3) There is attached hereto and made a part hereof the affidavit of Howard Sutheralnd, the Alien Property Custodian, in which he states that the Alien Property Custodian duly seized the aforesaid Letters Patent No. 718,340 on February 21, 1919.

(Sgd.) Leonard E. Wales, United States Attorney, Solicitor for Howard Sutheralnd, as Alien Property Custodian.

Copy of this motion served on the attorney for Badische Anilin & Soda Fabrik, the twenty-eighth day of April, 1928.

[fol. 89] City of Washington,
District of Columbia, ss:

Howard Sutherland, being first duly sworn, deposes and says:

I am Alien Property Custodian of the United States of America. The records of my office show that on or about the third day of February, 1919, A. Mitchell Palmer, the then Alien Property Custodian, after investigation, determined that Badische Anilin & Soda Fabrik was an enemy not holding a license granted by the President, and that Patent No. 718,340 was owned by and held for, by, on account of, and for the benefit of said enemy. Thereupon the Alien Property Custodian seized the said patent and required that it be conveyed, transferred, assigned, and delivered to him. Thereafter on February 21, 1919, the Commissioner of Patents accepted service of the seizure and demand of the Alien Property Custodian, and on the same date the Commissioner of Patents received and recorded said seizure of said patent in Liber Y-106, page 133, of the Transfers of Patents. On or about the tenth day of April, 1919, the Alien Property Custodian Assigned said patent to the Chemical Foundation, Inc.

(Sgd.) Howard Sutherland.

Subscribed and sworn to before me this twenty-seventh day of April, 1928. (Sgd.) Sophie D. Hillman, Notary Public, D. C. My commission expires November 5, 1931. (Seal.)

[fol. 90] IN UNITED STATES DISTRICT COURT

No. 487

[Title omitted.]

STIPULATION AS TO FACTS—Filed April 30, 1928

For purpose of the trial of the above-entitled suit the following are accepted and agreed to be facts, the proof whereof by any party is dispensed with, each party reserving, however, all proper objections to the introduction of any thereof as evidence:

I. The Chemical Foundation, Incorporated, is and during all the times herein concerned was a corporation and citizen of the State of Delaware, having its principal office in the City of Wilmington in said state.

II. Frank White is the Treasurer of the United States and resides and has his office in the City of Washington, District of Columbia.

III. E. I. du Pont de Nemours and Company is, and during all the times herein concerned was a corporation of the State of Delaware, having its principal place of business at Wilmington in said State.

IV. Letters Patent No. 680,395, entitled "Process of Making Indoxyl Derivatives," were lawfully granted and [fol. 91] issued by the United States Patent Office under date of August 13, 1901, to Deutsche Gold & Silber Scheide Anstalt vorm. Roessler, a corporation organized under the laws of Germany and having its principal place of business at Frankfort-on-the-Main, Germany; the application for said letters patent having theretofore been assigned to said corporation by the inventor, Johannes Pfleger, of Frankfort-on-the-Main, Germany, the instrument of assignment

being dated June 25, 1901, and duly recorded in the United States Patent Office.

V. Letters Patent No. 718,340, entitled "Process of Making Cyan-Methyl Derivatives of Aromatic Amids," were lawfully granted and issued by the United States Patent Office under date of January 13, 1903, to Badische Anilin & Soda Fabrik, a corporation organized under the laws of Germany, and having its principal place of business at Ludwigshafen-on-the-Rhine, Germany; the application for said letters patent having theretofore been assigned to said German corporation by the inventor, Otto J. Graul, of Ludwigshafen-on-the-Rhine, Germany, the instrument of assignment being dated January 17, 1902, and duly recorded in the United States Patent Office.

VI. Letters Patent No. 868,294, entitled "Process of Producing Phenylglycin and its Homologues," were lawfully granted and issued by the United States Patent Office under date of October 15, 1907, to Farbwerke vorm. Meister, Lucius & Bruning, a corporation organized under the laws of Germany, and having its principal place of business at Hochst-on-the-Main, Germany; the application for said letters patent having theretofore been assigned to said German corporation by the inventor, Robert Schmidlin, of Hochst-on-the-Main, Germany, the instrument of assignment being dated May 3, 1906, and duly recorded in the United States Patent Office.

[fol. 92] VII. Each of the aforesaid letters patent was valid and copies of the specications thereof are annexed to the bill of complaint in this suit as "Exhibit A-1," "Exhibit A-2," "Exhibit A-3," and by reference are hereby made a part hereof.

VIII. Under authority of and in conformity with the Act of Congress known as the "Trading with the Enemy Act," and the amendments thereto, and the Executive Orders issued by the President of the United States in pursuance thereof, the Federal Trade-Commission on the twenty-first day of January, 1918, duly granted a certain license under the aforementioned letters patent (known and identified as License No. 19), to said E. I. du Pont de Nemours & Company, the terms and conditions of which license are particu-

larly set forth in the instrument of license, a copy of which is annexed to the bill of complaint in this suit as "Exhibit B" and by reference is hereby made a part hereof.

IX. Said License No. 19 provided among other things, that the said E. I. du Pont de Nemours & Company should pay to the Alien Property Custodian, semi-annually, a royalty of 5 per cent. of the net profits derived from the sale of the products included in said license. On January 14, 1920, the Federal Trade Commission, acting under authority as aforesaid, by order, duly amended said license so as to provide that from on and after August 1, 1919, the royalty payable thereunder should be at the rate of 2 per per cent. of the gross amounts received by the licensee, E. I. du Pont de Nemours & Company, from the sale of the products included in said license as more fully set forth in the said order. A copy of said order is annexed to the bill of complaint in this suit as "Exhibit C" and by reference is hereby made a part hereof.

[fol. 93] X. On September 1, 1920, the Federal Trade Commission, acting under authority as aforesaid, by order duly cancelled and terminated said license, as more fully set forth in said order, a copy of which is annexed to the bill of complaint in this suit as "Exhibit E" and by reference is hereby made a part hereof.

XI. Said license authorized said E. I. du Pont de Nemours & Company to use and employ in addition to the above-mentioned letters patent such other inventions, owned or controlled by an enemy or ally of enemy as might be found desirable in order to make, use and vend the group of dyes known as Indigo and its Derivatives, as is more particularly set forth in said license. The said E. I. du Pont de Nemours & Company did not, under the authority of these provisions of the said license, use or employ any such other inventions.

XII. Subsequent to the issuance of said License No. 19, but prior to its cancellation as aforesaid, the Alien Property Custodian, acting under authority of and in conformity with the said "Trading with the Enemy Act," and the amendments thereto, and the executive orders and proclamations issued by the President of the United States in

pursuance thereof, after investigation duly determined that said Deutsche Gold & Silber Scheide, Anstalt vorm. Roessler, and said Badische Anilin and Soda Fabrik, and said Farwerke vorm. Meister, Lucius & Bruning were severally enemies (as defined in the said "Trading with the Enemy Act" as amended) not holding licenses granted by the President of the United States within the purview of said act as amended and said orders and proclamations, and that the said Letters Patent Nos. 680,395, 718,340 and 868,294, and every right, title, and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or gov-
[fol. 94] ernment, for past infringement thereof respectively belonged to, or were held for, on account of, or on behalf of or for the benefit of said enemies, and duly seized severally the said letters patent and every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof; the instrument of seizure covering Letters Patent No. 680,395 and appurtenant rights and benefits being dated March 22, 1919, and recorded March 26, 1919, in the United States Patent Office; the instrument of seizure covering Letters Patent No. 718,340 and appurtenant rights and benefits being dated February 3, 1919, and recorded February 21, 1919, in the United States Patent Office; the instrument of seizure covering Letters Patent No. 868,294 and appurtenant rights and benefits being dated March 22, 1919, and recorded March 26, 1919, in the United States Patent Office; all of which more particularly appears in the said instruments of seizure, copies of which are hereto attached, made a part hereof and marked respectively "Exhibit D-1," "Exhibit D-2," and "Exhibit D-3."

XII. The aforesaid instruments of seizure covering Letters Patent 680,395 and 868,294 and appurtenant rights and benefits (Exhibits D-1 and D-3) disclose that the seizures thereby made were made "subject to the rights of E. I. du Pont de Nemours & Company, Wilmington, Delaware," this language referring solely to such rights under these letters patent as were enjoyed by said E. I. du Pont de Nemours & Company under the aforesaid License No. 19.

XIV. Thereafter, the Alien Property Custodian, acting under like authority and under authority of certain orders dated February 26, 1919, and April 5, 1919, issued by Frank L. Polk as delegate of the President of the United States, [fol. 95] duly sold to said The Chemical Foundation, Incorporated, the aforesaid letters patent (among others), together with all claims and demands for profits and damages recoverable at law or in equity for the past infringement thereof against every person, firm, corporation or government except the Government of the United States of America, and subject only to the provisions of a certain release to the United States of America and to the rights of citizens of the United States or of friendly nations, as set forth in the requirements or demands for certain of the letters patent and other properties concerned; all of which is more particularly set forth in the instrument of assignment dated April 10, 1919, which was duly recorded in the United States Patent Office, and a copy of which with the pertinent excerpts from the schedules thereto attached and referred to therein, is hereto attached, made a part hereof and marked "Exhibit F-1."

A copy of the release from the Alien Property Custodian to the United States of America referred to in the aforementioned instrument dated April 10, 1919, is hereto annexed, made a part hereof and marked "Exhibit F-2."

The only rights of citizens of the United States or of friendly nations referred to in said instrument dated April 10, 1919, herein concerned are those of E. I. du Pont de Nemours & Company, which rights, as above stated, are limited to those this company enjoyed by virtue of said License No. 19.

XV. Thereafter the President of the United States by virtue of authority vested in him by the provisions of said "Trading with the Enemy Act," as amended, by an Executive Order dated February 13, 1920, duly ratified and confirmed the sales made by the Alien Property Custodian to the said The Chemical Foundation, Incorporated, and au- [fol. 96] thorized the Alien Property Custodian to ratify and confirm such sales by the execution and delivery of a suitable instrument of ratification; all of which is more particularly set forth in said Executive Order, a copy of which

is hereto attached, made a part hereof and marked "Exhibit G-1." The Alien Property Custodian, acting under the authority as aforesaid and under the last mentioned Executive Order of the President of the United States, duly ratified and confirmed the said sales to the said The Chemical Foundation, Incorporated, by a suitable instrument of ratification; such instrument being dated March 1, 1921, and duly recorded in the United States Patent Office, and a copy thereof being hereto annexed, made a part hereof and marked "Exhibit G-2."

XVI. Annexed hereto, made a part hereof and marked with the exhibit numbers hereinafter designated are the copies of the following:

Exhibit H-1. Excerpts from Executive Order issued by President Wilson on October 12, 1917.

Exhibit H-2. Executive Order issued by President Wilson on October 29, 1917.

Exhibit H-3. Executive Order issued by President Wilson on February 5, 1918.

Exhibit H-4. Executive Order issued by President Wilson on February 26, 1918.

Exhibit H-5. Excerpts from Executive Order issued by President Wilson on April 11, 1918.

Exhibit H-6. Executive Order issued by President Wilson on July 16, 1918.

Exhibit H-7. Executive Order issued by President Wilson on December 3, 1918.

[fol. 97] Exhibit H-8. Executive Order issued by President Wilson on November 25, 1919.

Exhibit H-9. Executive Order issued by Honorable Frank L. Polk, the Acting Secretary of State, on February 26, 1919.

Exhibit H-10. Executive Order issued by Honorable Frank L. Polk, the Acting Secretary of State, on April 5, 1919.

XVII. The "end of the war" referred to in Section 2 and subsection (f) of Section 10 of the "Trading with the Enemy Act," as amended, occurred on July 2, 1921, and that this suit was filed within the expiration of one year thereafter.

XVIII. It is agreed on the part of said The Chemical Foundation, Incorporated, that it makes no claim for recovery from the said E. I. du Pont de Nemours & Company, as licensee, of any reasonable royalty fixed by the Court for any use and enjoyment by the said E. I. du Pont de Nemours & Company, as licensee, of the said patented inventions covered by the letters patent herein above mentioned prior to April 10, 1919.

(Sgd.) Wm. G. Mahaffy, Solicitor for The Chemical Foundation, Inc. (Sgd.) J. P. Laffey, Solicitor for E. I. du Pont de Nemours & Co. (Sgd.) Leonard E. Wales, (Sgd.) Thomas E. Rhodes, Solicitors for Frank White, as Treasurer of the United States.

[fol. 98] EXHIBIT D-1

Demand Form (3)

Trust No. 12009. Report No. 38127

Patent. Owned by Enemy Subject to the Rights of Others

E. I. du Pont de Nemours & Co., Wilmington, Delaware; Roessler & Haaslacher, 100 Williams Street, New York, New York; to the Commissioner of Patents, Washington, D. C.; to all to whom these presents may come:

I, Frances P. Garvan, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act," approved October 6, 1917, and the amendments thereto and the executive orders and proclamations issued in pursuance thereof, under and by virtue of the authority vested in me as Alien Property Custodian, after investigation, do determine that Deutsche Gold & Silver Scheide Anstalt vorm. Roessler, Frankfort-on-the-Main, Germany, is an enemy not holding a license granted by the President within the purview of said Act as amended and said orders and proclamations; and I do further, after investigation, determine

that certain letters patent of the United States, identified as follows: Patent No. 680,395; Date of issue, Aug. 13, 1901; Title, Process of making Indoxyl derivatives, and [fol. 99] every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof, subject to the rights of E. I. du Pont de Nemours & Co., Wilmington, Delaware, belongs to, or is held for, or on account of, or on behalf of, or for the benefit of said enemy, Deutsche Gold & Silver Scheide Anstalt vorm. Roessler, Frankfort-on-the-Main, Germany.

As such Alien Property Custodian, I do seize said letters patent and every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof, subject to the rights of E. I. du Pont de Nemours & Co., Wilmington, Delaware, and I hereby require that you convey, transfer, assign and deliver the same to me, to be by me, as Alien Property Custodian, held, administered and accounted for as provided by law.

I, as Alien Property Custodian, do request that the Commissioner of Patents record this requirement upon the books and records kept by him, to show the assignment and transfer of letters patent, in respect to said letters patent above mentioned.

This demand is supplementary to any and all requirements and demands heretofore made with respect to said property and is in addition to and without prejudice to such requirements and demands, and shall in no way affect the interests, rights and powers acquired by me as Alien Prop- [fol. 100] erty Custodian by virtue of such previous requirements and demands.

Witness my hand and seal of office this 22nd day of March, 1919.

Francis P. Garvan, Alien Property Custodian.

Service of the foregoing demand is hereby acknowledged this 26th day of March, 1919.

R. F. Whitehead, Acting Commissioner of Patents.

2-392

Department of the Interior, United States Patent Office

Received and Recorded on the 26th day of March, 1919, in Liber K 106, page 417, of Transfers of Patents.

In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed.

James T. Newton, Commissioner of Patents. (Seal.)

EHI.
EZ.
6-1697.

[fol. 101] EXHIBIT D-2

Trust No. G-734. Report No. 33051

Demand of Alien Property Custodian

To: Badische Anilin & Soda-Fabrik,
Ludwigshafen-Am-Rhine, Germany.

Messrs. Hauff & Warland,
41 Park Row,
New York, N. Y.

The Commissioner of Patents,
Washington, D. C.

And all to whom these presents may come:

I, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act," approved October 6, 1917, and the amendments thereto and the executive orders and proclamations issued in pursuance thereof, under and by virtue of the authority vested in me as Alien Property Custodian, after investigation, do determine that the Badische Anilin & Soda-Fabrik, of Ludwigshafen-am-Rhine, Germany, is an enemy not holding a license granted by the President within the purview of said Act as amended and said orders and proclamations; and I do further, after investigation, determine that cer-

tain Letters Patent of the United States and applications for Letters Patent of the United States, identified as follows:

Name	Patent Number	Date
Otto Graul, of Ludwigshafen-am-Rhine, Germany.	718,340	January 13, 1903.

[fol. 102] and every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof, belong to, or are held for, or on account of, or on behalf of, or for the benefit of said enemy.

As such Alien Property Custodian I do seize said Letters Patent and applications for Letters Patent, and every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof; and I hereby require that you convey, transfer, assign and deliver the same to me, to be by me, as Alien Property Custodian, held, administered, and accounted for as provided by law.

I, as Alien Property Custodian, do request that the Commissioner of Patents record this requirement upon the books and records kept by him, to show the assignment and transfer of Letters Patent and applications for Letters Patent, in respect to said Letters Patent and applications for Letters Patent above mentioned, and I further request, that the Commissioner of Patents issue any and all Letters Patent which may be granted upon said applications to me as Alien Property Custodian, my successors in office, or assigns.

This demand is supplementary to any and all requirements and demands heretofore made with respect to said property, and is in addition to and without prejudice to such requirements and demands, and shall in no way affect the interests, rights and powers acquired by me as Alien Prop-

erty Custodian by virtue of such previous requirements and demands.

Witness my hand and seal of office this 3rd day of February, 1919.

A. Mitchell Palmer, Alien Property Custodian.
(Seal.)

[fol. 103] Service of the foregoing demand is hereby acknowledged this 11th day of February, 1919.

Hauff & Warland.

Receipt acknowledged Feb. 20, 1919.

J. T. Newton, Com. Pats.

EXHIBIT D-3

Demand Form (3)

Trust No. 12079. Report No. 38124

Patent Owned by Enemy Subject to the Rights of Others

E. I. Du Pont de Nemours & Company, Wilmington, Delaware; H. A. Metz Laboratories, Inc., New York, N. Y.; to the Commissioner of Patents, Washington, D. C.; to all to whom these presents may come:

I, Francis P. Garvan, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading With the Enemy Act," approved October 6, 1917, and the amendments thereto and the executive orders and proclamations issued in pursuance thereof, under and by virtue of the authority vested in me as Alien Property Custodian, after investigation, do determine that Farbwerke vorm. Meister, Lucius & Bruning, Mochst-on-the-Main, Germany, is an [fol. 104] enemy not holding a license granted by the President within the purview of said Act as amended and said orders and proclamations; and I do further, after investigation, determine that certain letters patent of the United States, identified as follows: Patent No., 868,294; Date of

issue, Oct. 15, 1907; Title, Process of producing Phenylglycin and its homologues, and every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof, subject to the right of E. I. Du Pont de Nemours & Company, Wilmington, Delaware, belongs to, or is held for, or on account of, or on behalf of, or for the benefit of said enemy, Farbwerke vorm. Meister, Lucius & Bruning, Hochst-on-the-Main, Germany.

As such Alien Property Custodian, I do seize said letters patent and every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof, subject to the rights of E. I. Du Pont de Nemours & Company, Wilmington, Delaware, and I hereby require that you convey, transfer, assign and deliver the same to me, to be by me, as Alien Property Custodian, held, administered and accounted for as provided by law.

I, as Alien Property Custodian, do request that the *the* Commissioner of Patents record this requirement upon the [fol. 105] books and records kept by him, to show the assignment and transfer of letters patent, in respect to said letters patent above mentioned.

This demand is supplementary to any and all requirements and demands heretofore made with respect to said property and is in addition to and without prejudice to such requirements and demands, and shall in no way affect the interests, rights and powers acquired by me as Alien Property Custodian by virtue of such previous requirements and demands.

Witness my hand and seal of office this 22nd day of March, 1919.

Francis P. Garvan, Alien Property Custodian.

Service of the foregoing demand is hereby acknowledged, this 26th day of March, 1919.

R. F. Whitehead, Acting Commissioner of Patents.

485.

2-392

Department of the Interior, United States Patent Office

Received and recorded on the 26th day of March, 1919, in Liber Z 106, page 301, of Transfers of Patents.

In Testimony Whereof I have caused the seal of the Patent Office to be hereunto affixed.

James T. Newton, Commissioner of Patents. (Seal.)

Exd.
LLW.
6-1697.

[fol. 106] EXHIBIT F-1

Assignment

Whereas A. Mitchell Palmer, formerly Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act", approved October 6, 1917, and the amendments thereto and the Executive orders and proclamations issued in pursuance thereof, did, during his incumbency of said office of Alien Property Custodian by virtue of requirements or demands issued under his hand and seal of office and duly recorded in the United States Patent Office, seize and require to be conveyed to him certain letters patent of the United States and applications for letters patent of the United States which together with other letters patent and applications for letters patent are enumerated in Schedule A hereto attached, together with every right, title, and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for past infringement of said letters patent, subject to the rights of citizens of the United States or of friendly nations as stated in certain of the requirements or demands relating to said letters patent and applications for letters patent; and

Whereas, I, Francis P. Garvan, was on the 4th day of March, 1919, duly appointed and thereafter duly qualified as Alien Property Custodian in succession of the said A. Mitchell Palmer; and

Whereas I, Francis P. Garvan, as Alien Property Custodian as aforesaid by virtue of requirements or demands issued under my hand and seal of office and duly recorded in the United States Patent Office and in the Office of the Register of Copyrights of the United States, have seized [fol. 107] and required to be conveyed to me certain letters patent of the United States and certain trade-marks and registrations thereof and the business and good will appurtenant thereto, and certain copyrights and the certificates of registration thereof and the works upon which said copyrights were issued and certain rights, interests, and benefits under agreements, all of which are included in Schedules A, B, C, and D, hereto attached, together with every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for the past infringement of said letters patent, trade-marks, and copyrights, subject to the rights of citizens of the United States or of friendly nations as stated in certain of the requirements or demands relating to said letters patent, applications for letters patent, trade-marks, and registrations thereof, copyrights, and rights, interests, and benefits; and

Whereas by a certain order bearing date the 26th day of February, 1919, concerning the sale, transfer, and release of certain rights under letters patent, trade-marks, and similar rights, determined to belong to, or to be held for, or on account of, or on behalf of, or for the benefit of persons determined to be enemies not holding a license or licenses granted by the President within the purview of the "trading with the enemy act" and the amendments thereto and by another certain order bearing date the 5th day of April, 1919, concerning the sale, transfer, and release of certain copyrights, applications for letters patent, and applications for the registration of trade-marks and copyrights determined to belong to or to be held for, by, on account of or for the benefit of perosns determined to be enemies not holding a license or licenses granted by the

President within the purview of the "trading with the [fol. 108] enemy act" and the amendments thereto, both made by Frank L. Polk under authority of Executive order of December 3, 1918, I am empowered to sell such letters patent, applications for letters patent, trade-marks and registrations thereof, copyrights and rights, interests and benefits under agreements to the Chemical Foundation (Inc.), a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, as I determine relate to the objects and purposes of the said the Chemical Foundation (Inc.), as expressed and defined in its charter; and

Whereas I have determined that the letters patent of the United States, applications for letters patent of the United States, trade-marks and registrations thereof, copyrights and rights, interest and benefits under agreements enumerated in Schedules A, B, C, and D hereto annexed relate to the objects and purposes of the said the Chemical Foundation (Inc.), as expressed and defined in its charter.

Now, therefore, in consideration of the sum of two hundred and fifty thousand dollars ($250,000.00), paid by the said the Chemical Foundation (Inc.), receipt whereof is hereby acknowledged, I, Francis P. Garvan, as Alien Property Custodian as aforesaid, by these presents, do sell, assign, transfer, and set over unto the said the Chemical Foundation (Inc.), its successors and assigns, the whole right, title, and interest acquired by me and by said A. Mitchell Palmer, each as said Alien Property Custodian as aforesaid, in and to:

1. Each of the letters patent of the United States and applications for letters patent of the United States and applications for letters patent of the United States enu- [fol. 109] merated in Schedule A hereto annexed, together with all claims and demands for profits and damages recoverable at law or in equity for the past infringement of said letters patent of the United States against every person, firm, corporation, or government except the Government of the United States of America;

2. Each of the United States copyrights and the certificates of registration thereof and the works upon which

said copyrights were granted, enumerated in Schedule B hereto annexed, together with all claims and demands for profits and damages recoverable at law or in equity for the past infringement of said copyrights against every person, firm, corporation, or government except the Government of the United States of America;

3. Each of the trade-marks, and the registrations thereof enumerated in Schedule C, hereto annexed and the business and good will appurtenant thereto, together with all claims and demands for profits and damages recoverable at law or in equity for the past infringement of said trade-marks against every person, firm, corporation, or government except the Government of the United States of America;

4. All of the rights, interests, and benefits under the agreements enumerated in Schedule C hereto annexed;

All as more specifically described and set forth in the requirements or demands relating to said letters patent of the United States, applications for letters patent of the United States, trade-marks and registration thereof, copyrights and rights, interests and benefits under agreements issued by said A. Mitchell Palmer, as Alien Property Custodian, or by me as Alien Property Custodian without any [fol. 110] reservation or qualification whatsoever, whether by reason of anything contained in the charter or by-laws of the said the Chemical Foundation (Inc.), or otherwise, and subject only to the provisions of a certain release to the United States of America, bearing even date herewith, and to the rights of citizens of the United States or of friendly nations as set forth in the requirements or demands for certain of said letters patent of the United States, applications for letters patent, trademarks and registration thereof, copyrights and rights, interests and benefits under agreements.

I, as Alien Property Custodian as aforesaid, do hereby request the Commissioner of Patents to issue any letters patent granted upon any of the applications for letters patent enumerated in Schedule A hereto attached to the Chemical Foundation (Inc.) as the assignee of my entire right title, and interest therein.

In witness whereof I have hereunto set my hand and seal of office this 10th day of April, 1919.

Francis P. Garvan, Alien Property Custodiaan.

WASHINGTON,
District of Columbia, ss:

On this 10th day of April, 1919, before me came Francis P. Garvan, Alien Property Custodian, duly apponted, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act", approved October 6, 1917, and the amendments thereto and the executive orders issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing instrument as Alien Property Custodian as aforesaid.

Owen B. Gray, Notary Public.

• • • • • • •

[fol. 111] The following Patents & Applications demanded under

Report No. 35,051—Trust No. 734

Badische Anilin & Soda Fabrik Co.

Patent No.	Date	Title
• • •	• • •	• • •
718,340	1/13/03	
• • •	• • •	• • •
868,294	Oct. 15, 1907	Process of Producing Phenylglycin and its Homologues.
• • •	• • •	• • •
680,395	Aug. 13, 1901	Process of making Indoxyl derivatives.

EXHIBIT F-2

Whereas A. Mitchell Palmer, formerly Alien Property Custodian, duly appointed, qualified and acting under the

provisions of the Act of Congress known as the "Trading with the Enemy Act"; approved October 6, 1917, and the amendments thereto and the executive orders and proclamations issued in pursuance thereof, did during his incumbency of said office of Alien Property Custodian by virtue of requirements or demands issued under his hand and seal of office and duly recorded in the United States Patent Office, seize and require to be conveyed to him certain letters patent of the United States and applications for letters patent of the United States which together with other letters patent and applications for letters patent are enumerated in Schedule A hereto attached together with every right title and interest with respect thereto including all damages and profits recoverable at law or in equity from any person firm, corporation or government for past [fol. 112] infringement of said letters patent, subject to the rights of citizens of the United States or of friendly nations as stated in certain of the requirements or demands relating to said letters patent and applications for letters patent; and

Whereas I, Francis P. Garvan, was on the fourth day of March, 1919, duly appointed and thereafter duly qualified as Alien Property Custodian in succession of the said A. Mitchell Palmer; and

Whereas I, Francis P. Garvan, as Alien Property Custodian as aforesaid by virtue of requirements or demands issued under my hand and seal of office and duly recorded in the United States Patent Office and in the Office of the Register of Copyrights of the United States, have seized and required to be conveyed to me certain letters patent of the United States and applications for letters patent of the United States, certain trademarks and the registrations thereof and the business and good-will appurtenant thereto, and certain copyrights and the certificates of registration thereof and the works upon which said copyrights were issued, all of which are included in Schedules A, B and C hereto attached together with every right, title and interest with respect thereto including all damages and profits recoverable at law or in equity from any person, firm, corporation or government for the past infringement of said letters patent, trademarks and copyrights, subject to the rights of citizens of the United States or of friendly nations as stated in certain of the require-

ments or demands relating to said letters patent, applications for letters patent, trademarks, and registrations thereof, and copyrights; and

Whereas by a certain order bearing date the 26th day of February, 1919, concerning the sale, transfer and release of certain rights under letters patent, trade-marks [fol. 113] and similar rights, determined to belong to, or to be held for, or on account of, or on behalf of, or for the benefit of persons determined to be enemies not holding a license or licenses granted by the President within the purview of the "Trading with the Enemy Act" and the amendments thereto and by another certain order bearing date the 5th day of April, 1919, concerning the sale, transfer and release of certain copyrights, applications for letters patent and applications for the registration of trademarks and copyrights determined to belong to or to be held for, by, on account of or for the benefit of persons determined to be enemies not holding a license or licenses granted by the President within the purview of the "Trading with the Enemy Act," and the amendments thereo, both made by Frank L. Polk under authority of executive order of December 3, 1918, I am empowered to sell such letters patent, applications for letters patent, trademarks and registrations thereof, and copyrights to The Chemical Foundation, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, as I determine relate to the objects and purposes of the said The Chemical Foundation, Inc., as expressed and defined in its charter and to release and discharge the United States of America and any department thereof from any and all claims and demands arising from any alleged infringement of said letters patent, trademarks and copyrights; and

Whereas I have determined that the letters patent of the United States, applications for letters patent of the United States, trademarks and registrations thereof and copyrights enumerated in Schedules A, B and C hereto annexed relate to the objects and purposes of the said The Chemical Foundation, Inc., as expressed and defined in its charter.

[fol. 114] Now, therefore, in consideration of the sum of Ten dollars ($10.00) to me in hand paid, receipt whereof is hereby acknowledged, I, Francis P. Garvan, as Alien

Property Custodian as aforesaid, do hereby release and forever discharge the United States of America and all of its departments, from any and all claims and demands for profits and damages recoverable at law or in equity for the past infringement of the letters patent, trademarks and copyrights enumerated in Schedules A, B and C hereto annexed, arising out of the manufacture, use or sale of the inventions of any or all of the said letters patent, or the sale of any article under any or all of said trademarks, or the printing, publication, distribution or sale of the works covered by any or all of said copyrights, by or for the United States of America or of any of its departments, subject, however, to the rights of citizens of the United States or of friendly nations, as more fully set forth in the said requirements or demands issued by the said A. Mitchell Palmer as Alien Property Custodian, or by me, as Alien Property Custodian, relating to certain of said letters patent, trademarks and copyrights.

In witness whereof I have hereunto set my hand and seal of office, this 10th day of Arpil, 1919.

(Sgd.) Francis P. Garvan, Alien Property Custodian.

[fol. 115] EXHIBIT G-1

Executive Order

An order concerning the sale and conveyance of certain choses in action and rights, interests, and benefits under certain agreements determined to belong to, or to be held for, by, on account of, or on behalf of, or for the benefit of persons determined to be enemies, not holding a license or licenses granted by the President within the purview of the "Trading with the Enemy Act" and the amendments thereto

By virtue of the authority vested in me by an act of Congress entitled "An act to define, regulate, and punish trading with the enemy and for other purposes", approved October 6, 1917, known as the "Trading with the Enemy Act", and the amendment to such act embodied in "An Act making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June 30th, 1918,

and prior fiscal years on account of war expenses and for other purposes", approved March 28, 1918, and the amendment to such act embodied in "An Act making appropriations to supply deficiences in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years on account of war expenses and for other purposes", approved November 4, 1918, to make certain orders such as that herein contained, and all other powers and authorities me hereto enabling, I do hereby make the following determination and order:

Whereas by Orders dated February 26, 1919, and April 5, 1919, made by Frank L. Polk under the authority of Executive Order No. 3016 of December 3, 1918, the Alien Property Custodian was authorized to sell and convey to the Chemical Foundation, Inc., a corporation organized and existing under and by virtue of the laws of (118) the State [fol. 116] of Delaware, certain choses in action and rights, interests and benefits heretofore determined to belong to, or to be held for, by, or on account of, or of for the benefit of persons heretofore determined to be enemies; and

Whereas it was the intention of the said Executive Orders to authorize the said Custodian to sell and convey thereunder, all choses in action, rights, interests and benefits under agreements and rights and claims of every character and description including rights to receive moneys by way of royalties or otherwise as compensation for the use of patents trademarks or tradenames, which the Alien Property Custodian may have seized under the provisions of the "Trading with the Enemy Act" as amended, and which he had from time to time determined to relate to the objects and purposes of the said The Chemical Foundation, Inc., as expressed and defined in its charter; and

Whereas doubt has arisen as to the authority of the said Alien Property Custodian to sell and convey to the said The Chemical Foundation, Inc., certain of the said choses in action, rights, interests, benefits under agreements, and rights and claims including rights to receive moneys by way of royalties or otherwise, as compensation for the use of patents, trademarks or tradenames:

Now, therefore, I, Woodrow Wilson, President of the United States of America, do hereby in the public interest, determine and order that the Alien Property Custodian is hereby authorized to sell at private sale, without public or

other advertisement, to The Chemical Foundation, Inc., a corporation organized and existing under and by virtue of the laws of the State of Delaware, at such place and upon such terms and conditions as to the Alien Property Cus- [fol. 117] todian may seem proper, all choses in action, rights, interests and benefits under agreements and rights and claims of every character and description which the Alien Property Custodian may seize or may have seized under the provisions of the "Trading with the Enemy Act" and the amendments thereto now or (119) hereafter enacted and which he from time to time shall determine relate to the objects and purposes of the said The Chemical Foundation, Inc., as expressed and defined in its charter.

The Alien Property Custodian is also hereby authorized in the case of sales heretofore made by him of any property which he is hereby authorized to sell, but as to which his authority to sell the same under the said Orders of February 26, 1919, and April 5, 1919, may be deemed doubtful to confirm and ratify the said sales by the execution and delivery of a suitable instrument of confirmation.

My reasons for the foregoing determination and order are stated in the said orders of Frank L. Polk of the 26th of February, 1919, and the 5th of April, 1919; and in addition thereto, the public interest will be best served by the elimination of any enemy interest adverse to American citizens arising by reason of said choses in action, or rights, interests and benefits under agreements and by the devoting of any payments made by reason of said choses in action or under said agreements by The Chemical Foundation, Inc., to the promotion of the objects stated in its charter.

Done in the District of Columbia this 13th day of February in the year of Our Lord One Thousand Nine Hundred and Twenty, and of the Independence of the United States the One Hundred and Forty-fourth.

Woodrow Wilson.

[fol. 118] EXHIBIT G-2

Whereas, I, Francis P. Garvan, as Alien Property Custodian, and my predecessor in the said office, acting under the authority conferred upon the Alien Property Custodian by the act of Congress known as "trading with the enemy Act,"

approved October 6, 1917, and the amendments thereto, and the Executive orders and proclamations issued in pursuance thereof, did seize, by certain seizure orders, certain letters patent, application therefor, copyrights, certificates of registration thereof, publications upon which such registrations were granted, trade-marks, the good will and business pertaining thereto, rights, interests, and benefits under agreements, and, together with the foregoing certain rights, claims, demands, interests, and choses in action, some of which were connected with or appurtenant to the same; and

Whereas by the said act of Congress and the amendments thereto, and by certain of said orders, dated respectively February 26, 1919, and April 5, 1919, the Alien Property Custodian was authorized to sell to the Chemical Foundation (Inc.), a corporation organized and existing under and by virtue of the laws of the State of Delaware, certain of the said letters patent and other property above referred to; and

Whereas, I, Francis P. Garvan, as Alien Property Custodian, pursuant to said authority vested in me for valuable consideration and at such places and upon such terms and conditions as to myself, as Alien Property Custodian, seemed proper, did sell to said the Chemical Foundation (Inc.), at private sale without public or other advertisement, certain of the said letters patent and other property, which letters patent and other property I, as Alien Property Custodian, [fol. 119] from time to time determine to relate to the objects and purposes of said the Chemical Foundation (Inc.), as expressed and defined in its charter, and in effectuation of the said sales did execute and deliver to said the Chemical Foundation (Inc.) certain assignments in writing, in which assignments the patents, applications therefore, copyrights, and trade-marks assigned are enumerated, and which assignments are dated and recorded as follows:

(1) Assignment dated April 10, 1919, recorded as to patents, applications therefor, and trade-marks in the United States Patent Office on April 21, 1919, in liber Y 107, page 1 of Transfers of Patents, and recorded as to copyrights in the Library of Congress, Copyright Office, on April 15, 1919, in Copyright Office book 81, pages 181 to 186.

(2) Assignment dated May 2, 1919, recorded in the United States Patent Office on May 21, 1919, in liber J 107, page 152 of Transfers of Patents.

(3) Assignment dated May 6, 1919, recorded in the United States Patent Office on May 21, 1919, in liber A 107, page 229 of Transfers of Patents.

(4) Assignment dated May 15, 1919, recorded in the United States Patent Office on May 21, 1919, in liber X 107, page 188 of Transfers of Patents.

(5) Assignment dated June 17, 1919, recorded in the United States Patent Office on June 27, 1919, in liber L 107, page 242 of Transfers of Patents.

(6) Assignment dated June 21, 1919, recorded in the United States Patent Office on July 10, 1919, in liber H 107, page 259 of Transfers of Patents.

(7) Assignment dated October 17, 1919, recorded in the United States Patent Office on November 14, 1919 in liber P 108, page 441 of Transfers of Patents.

(8) Assignment dated December 9, 1919, recorded in the United States Patent Office on December 19, 1919, in liber Z 109, page 69 of Transfers of Patents.

[fol. 120] (9) Assignment dated February 26, 1920, recorded in the United States Patent Office on December 21, 1920.

(10) Assignment dated February 26, 1920, recorded in the United States Patent Office on December 21, 1920.

(11) Assignment dated March 9, 1920, recorded in the United States Patent Office on March 11, 1920, in liber X 108, page 435 of Transfers of Patents.

(12) Assignment dated May 4, 1920, recorded in the United States Patent Office on May 20, 1920, in liber X 109, page 199 of Transfers of Patents.

(13 Assignment dated May 15, 1920, recorded in United States Patent Office on November 1, 1920, in liber E 111, page 319 of Transfers of Patents.

(14) Assignment dated July 20, 1920, recorded in the United States Patent Office on July 27, 1920, in liber B 111, page 66 of Transfers of Patents.

(15) Assignment dated December 21, 1920, recorded in the United States Patent Office on December 21, 1920.

(16) Assignment dated December 21, 1920, recorded in the United States Patent Office on December 21, 1920.

(17) Assignment dated December 21, 1920, recorded in the United States Patent Office on December 21, 1920.

(18) Assignment dated December 21, 1920, recorded in the United States Patent Office on December 21, 1920.

(19) Assignment dated February 19, 1921, recorded in the United States Patent Office on February 23, 1921; and

Whereas it was the intention of myself as Alien Property Custodian and of said the Chemical Foundation (Inc.), in agreeing upon the said sales and in executing, delivering, [fol. 121] and receiving the said assignments that the said assignments should assign and convey to said the Chemical Foundation (Inc.), not only the letters patent and other property specifically referred to in and assigned by the said assignments, but also with such exceptions as are specifically stated in said assignments, all rights, claims, demands, interests, and choses in action of every character and description acquired by the Alien Property Custodian by virtue of the seizures whereby the said letters patent and other property were seized; and

Whereas doubt has arisen as to whether the language of the said assignments is in fact and in law sufficient and effectual to carry out the true intent and purpose aforesaid of the said sales and to assign and convey to said the Chemical Foundation (Inc.), all of the said rights, claims, demands, interests, and choses in action acquired by the Alien Property Custodian as aforesaid; and

Whereas doubt has arisen as to the authority of the Alien Property Custodian to sell and convey to the said the Chemical Foundation (Inc.), certain of the said choses in action, rights, interests, benefits under agreements, and rights and claims, including rights to receive moneys by way of royalties or otherwise, as compensation for the use of patents, trade-marks, or trade-names; and

Whereas in one of the above-mentioned Executive orders, the same being dated February 13, 1920, among other things it is recited that it was the intention of the above-mentioned orders dated February 26, 1919, and April 5, 1919, respectively, to authorize the Alien Property Custo-

dian to sell and convey thereunder, all choses in action, [fol. 122] rights, interests, and benefits under agreements and rights and claims of every character and description including rights to receive moneys by way of royalties or otherwise as compensation for the use of patents, trademarks, or trade-names, which the Alien Property Custodian may have seized under the provisions of the "trading with the enemy act" as amended, and which he had from time to time determined to relate to the object and purposes of said the Chemical Foundation (Inc.), as expressed and defined in its charter; and

Whereas the Alien Property Custodian is authorized by said Executive order dated February 13, 1920, to sell at private sale, without public or other advertisement, to said the Chemical Foundation (Inc.), at such place and upon such terms and conditions as to the Alien Property Custodian may seem proper, all choses in action, rights, interests, and benefits under agreements and rights and claims of every character and description which the Alien Property Custodian may seize or may have seized under the provisions of the "trading with the enemy act" and the amendments thereto, then or thereafter enacted and which he from time to time shall determine relate to the objects and purposes of the said the Chemical Foundation (Inc.), as expressed and defined in its charter; and

Whereas the Alien Property Custodian is also authorized by said Executive Order dated February 13, 1920, in the case of sales theretofore made by him of any property which he is authorized to sell by virtue of said Executive order dated February 13, 1920, but as to which his authority to sell the same under the said orders of February 26, 1919, and April 5, 1919, may be deemed doubtful to con- [fol. 123] firm and ratify the said sales by the execution and delivery by a suitable instrument of confirmation:

Now therefore, I, Francis P. Garvan, as Alien Property Custodian, by virtue of the authority conferred upon me by said "trading with the enemy act," as amended and by the Executive orders, orders and proclamations issued in pursuance thereof, do hereby for the purpose of effectuating the true intent of the parties to said assignments, confirm and ratify the sale and assignment to said the Chemical Foundation (Inc.), of, and do hereby for valuable consideration heretofore received by me, sell, assign, transfer,

and set over to said the Chemical Foundation (Inc.), all property, including (but not thereby limiting the generality of the foregoing) letters patent, rights under letters patent, applications for letters patent and rights thereunder, copyrights, rights under copyrights, certificates of registrations thereof, the publications upon which such registrations were granted, trade-marks, rights under trade-marks, together with the good will and business pertaining thereto including all profits and damages recoverable at law or in equity for past infringement with respect to any and all of the foregoing, choses in action, rights, interests, and benefits under agreements, and rights and claims of every character and description with respect to all of the foregoing, seized by me as Alien Property Custodian, or by my predecessor in such office specifically referred to in and assigned by said assignments, and I do hereby confirm and ratify the sale and assignment of and do hereby sell, assign, transfer and set over to said the Chemical Foundation (Inc.), all choses in action, rights, interests, and benefits under agreements and rights and claims of every character and description growing out of and ap- [fol. 124] purtenant to the ownership of said property, including (but not thereby limiting the generality of the foregoing) rights to receive moneys by way of royalties or otherwise as compensation for the use of patents, copyrights, and trade-marks, and all right, title, and interest in and to the choses in action and the funds referred to in section 10, subsection (f) of the "trading with the enemy act", as amended, acquired by the Alien Property Custodian by virtue of the seizures by which there were seized patents, copy-rights, or trade-marks, under which a license had theretofore been granted in accordance with the provisions of section 10, subsection (c) of said act, as amended, all of which property I, as Alien Property Custodian, from time to time have determined and do hereby determine to relate to the objects and purposes of said the Chemical Foundation (Inc.), as expressed and defined in its charter; the intent and purpose of this instrument being to vest in said the Chemical Foundation (Inc.), every right, title, interest, claim, and demand, save such as are specifically excepted in and by the said assignments, acquired by the Alien Property Custodian by virtue of the seizures whereby the said property was seized.

In witness whereof, I have hereunto set my hand and seal of office this 1st day of March, 1921.

Francis P. Garvan, Alien Property Custodian. (Seal.)

[fol. 125] District of Columbia, ss:

On this 1st day of March, 1921, before me came Francis P. Garvin, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act", approved October 6, 1917, and the amendments thereto, and the Executive orders issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing instrument as Alien Property Custodian as aforesaid.

Oden B. Gray, Notary Public. My commission expires October 4, 1925. (Seal.)

Exhibit H-1

Executive Order Vesting Power and Authority in Designated Officers and Making Rules and Regulations under Trading with the Enemy Act and Title VII of the Act Approved June 15, 1917

By virtue of the authority vested in me by "An act to define, regulate, and punish trading with the enemy and for other purposes," approved October 6, 1917, and by Title VII of the act approved June 15, 1917, entitled "An act to punish acts of interference with the foreign relations, the neutrality and the foreign commerce of the United States, to punish espionage and better to enforce the criminal laws of the United States and for other purposes" (hereinafter designated as the espionage act), I hereby make the following orders and rules and regulations:

* * * * * * *

[fol. 126] Federal Trade Commission

XVII. I further hereby vest in the Federal Trade Commission the power and authority to issue licenses under such terms and conditions as are not inconsistent with law

or to withhold or refuse the same, to any citizen of the United States or any corporation organized within the United States to file and prosecute applications in the country of an enemy or ally of enemy for letters patent or for registration of trade-mark, print, label, or copyright, and to pay the fees required by law and the customary agents' fees, the maximum amount of which in each case shall be subject to the control of such commission; or to pay to any enemy or ally of enemy any tax, annuity, or fee which may be required by the laws of such enemy or ally of enemy nation in relation to patents, trademarks, prints, labels, and copyrights.

XVIII. I hereby vest in the Federal Trade Commission the power and authority to issue, pursuant to the provisions of section 10 (c) of the trading-with-the-enemy act, upon such terms and conditions as are not inconsistent with law, or to withhold or refuse a license to any citizen of the United States, or any corporation organized within the United States, to manufacture or cause to be manufactured a machine, manufacture, composition of matter, or design, or to carry on or cause to be carried on a process under any patient, or to use any trade-mark, print, label, or copyrighted matter owned or controlled by an enemy or ally of enemy, at any time during the present war; and also to fix the prices of articles and products manufactured under such licenses necessary to health of the military and the naval forces of the United States, or the successful prosecution of the war; and to prescribe the fee which may be charged for such license, not exceeding $100 and not ex-
[fol. 127] ceeding 1 per cent of the fund deposited by the licensee with the alien property custodian as provided by law.

XIX. I hereby further vest in the said Federal Trade Commission the executive administration of the provisions of Section 10 (d) of the trading-with-the-enemy act, the power and authority to prescribe the form of, and time and manner of filing statements of the extent of the use and enjoyment of the license and of the prices received and the times at which the licensee shall make payments to the alien property custodian, and the amounts of said payments, in accordance with the trading-with-the-enemy act.

XX. I further hereby vest in the Federal Trade Commission the power and authority, whenever in its opinion the publication of an invention or the granting of a patent may be detrimental to the public safety or defense, or may assist the enemy, or endanger the successful prosecution of the war, to order that the invention be kept secret and the grant of letters patent withheld until the end of the war.

XXI. The said Federal Trade Commission is hereby authorized to take all such measures as may be necessary or expedient to administer the powers hereby conferred.

* * * * * * *

Alien Property Custodian

XXIX. I hereby vest in an alien-property custodian, to be hereafter appointed, the executive administration of all the provisions of section 7 (a), section 7 (c), and section (d) of the trading with the enemy act, including all power and authority to require lists and reports, and to extend [fol. 128] the time for filing the same, conferred upon the President by the provisions of said section 7 (a), and including the power and authority conferred upon the President by the provisions of said section 7 (c), to require the conveyance, transfer, assignment, delivery or payment to himself, at such time and in such manner as he shall prescribe, of any money or other properties owing to or belonging to or held for, by or on account of, or on behalf of, or for the benefit of any enemy or ally of an enemy, not holding a license granted under the provisions of the trading with the enemy act, which, after investigation, said alien property custodian shall determine is so owing, or so belongs, or is so held.

XXX. Any person who desires to make conveyance, transfer, payment, assignment or delivery, under the provisions of section 7 (d) of the trading with the enemy act, to the alien property custodian of any money or other property owing to or held for, by or on account of, or on behalf of, or for the benefit of an enemy or ally of enemy, not holding a license granted as provided in the trading with the enemy act, or to whom any obligation or form of liability to such enemy or ally of enemy is presented for pay-

ment, shall file application with the alien property custodian for consent and permit to so convey, transfer, assign, deliver or pay such money or other property to him, and said alien property custodian is hereby authorized to exercise the power and authority conferred upon the President by the provisions of said section 7 (d) to consent and to issue permit upon such terms and conditions as are not inconsistent with law, or to withhold or refuse the same.

XXXI. I further vest in the alien property custodian the executive administration of all the provisions of section 8 (a), section 8 (b), and section 9 of the trading with the [fol. 129] enemy act, so far as said sections relate to the powers and duties of said alien property custodian.

XXXII. I vest in the Attorney General all power and authority conferred upon the President by the provisions of section 9 of the trading with the enemy act.

XXXIII. The alien property custodian, to be hereafter appointed, is hereby authorized to take all such measures as may be necessary or expedient, and not inconsistent with law, to administer the powers hereby conferred; and he shall further have the power and authority to make such rules and regulations not inconsistent with law as may be necessary and proper to carry out the provisions of said section 7 (a), section 7 (c), section 7 (d), section 8 (a), and section 8 (b), conferred upon the President by the provisions thereof and by the provisions of section 5. (a), said rules and regulations to be duly approved by the Attorney General.

XXXIV. The alien property custodian, to be hereafter appointed, shall "under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe," have administration of all moneys (including checks and drafts payable on demand) and of all property, other than money which shall come into his possession in pursuance of the provisions if the trading with the enemy act, in accordance with the provisions of section 6, section 10, and section 12 thereof.

Woodrow Wilson.

The White House, 12 October, 1917.

[fol. 130] EXHIBIT H-12

Executive Order Fixing Salary of, and Vesting Certain Power and Authority in, the Alien Property Custodian Appointed under Trading with the Enemy Act

(No. 2744)

By virtue of the authority vested in me by "an Act to define, regulate, and punish trading with the enemy" approved October 6, 1917, I hereby make and establish the following order:

1. I hereby fix the salary of the Alien Property Custodian heretofore appointed at the sum of $5,000. per annum. I direct that said Alien Property Custodian shall give a bond in the amount of $100,000.00, with security to be approved by the Attorney General, and which bond shall be conditioned to well and faithfully hold, administer, and account for all money and property in the United States due or belonging to an enemy or ally of enemy, or otherwise, which may be paid, conveyed, transferred, assigned, or delivered to said Custodian under the provisions of the Trading with the Enemy Act.

2. I hereby authorize and empower the Alien Property Custodian to employ and appoint in the manner provided in the Trading with the Enemy Act in the District of Columbia and elsewhere, and to fix the compensation of such clerks, attorneys, investigators, accountants, and other employees as he may find necessary for the due administration of the powers conferred on such Alien Property Custodian by law or by any order of the President heretofore or hereafter made.

3. I hereby vest in the Alien Property Custodian the executive administration of the provisions of Section 12 of the [fol. 131] Trading with the Enemy Act pertaining to the designation of a depositary or depositaries, and requiring all such designated depositaries to execute and file bonds and prescribing the form, amount, and security thereof. And I authorize and empower the *the* Alien Property Custodian to designate any bank, or banks, or trust company, or trust companies, or other suitable depositary or depositaries located and doing business in the United States, as the de-

positary or depositaries with which said Alien Property Custodian may deposit any stocks, bonds, notes, time drafts, time bills of exchange, or other securities or property (except money, or cheques, or drafts payable on demand) of an enemy or ally of enemy and to prescribe the bond or bonds and the form, amount, and security thereof which shall be given by said depositary or depositaries.

4. The following sums, or so much thereof as may be necessary, are hereby allotted out of the funds appropriated by the Trading with the Enemy Act to the following named officers:

To the Alien Property Custodian	$100,000.00
To the Federal Trade Commission	25,000.00
To the Secretary of the Treasury	15,000.00
To the War Trade Board	25,000.00

to be expended in the administration of the powers vested respectively in them by law or by any order heretofore or hereafter made by me.

5. The powers and authority herein vested in said Alien Property Custodian are in addition to the powers and authority vested in said Alien Property Custodian by the Executive Order of October 12, 1917.

Woodrow Wilson.

The White House, 29 October, 1917.

[fol. 132]

EXHIBIT H-3

Executive Order

(No. 2801)

By virtue of the authority vested in me by an Act to define, regulate, and punish trading with the enemy, approved October 6, 1917, known as the Trading with the Enemy Act, I hereby make the following orders, rules and regulations:

1. Paragraph XXX of the Executive Order dated October 12, 1917, and made by me pursuant to said Act of Congress, is hereby revoked; and in place thereof it is hereby ordered:

XXX. Any person not an enemy, or ally of enemy, who owes to, or holds for or on account of, or on behalf of, or

for the benefit of, an enemy or an ally of enemy, not holding a license granted by or in the exercise of the power and authority of the President under the provisions of said Trading with the Enemy Act any money or other property, or to whom any obligation or form of liability to such enemy, or ally of enemy, is presented for payment, may, having first obtained the consent of the Alien Property Custodian, pay, convey, transfer, assign, or deliver, to or upon the order of the Alien Property Custodian, said money or other property, with like effect as if such payment, conveyance, transfer, assignment or delivery were made in obedience to requirement pursuant to the provisions of Section 7, subsection (c), of said Trading with the Enemy Act.

2. Paragraph XXXI of said Executive Order dated October 12, 1917, is hereby revoked; and in place thereof it is hereby ordered:

[fol. 133] XXXI. I hereby vest in the Alien Property Custodian the executive administration of all provisions of Section 8 (a) and Section 8 (b) of the Trading with the Enemy Act including the power, authority and duty conferred or imposed upon the President by the provisions of said Section 8 (a), and the notice therein required to be given to the President shall be given to the Alien Property Custodian.

Woodrow Wilson.

The White House, 5 February, 1918.

EXHIBIT H-4

Trading with the Enemy Act

Executive order prescribing rules and regulations respecting the exercise of the powers and authority and the performance of the duties of the Alien Property Custodian under the "Trading with the Enemy Act" and prior executive orders pursuant thereto, and respecting the deposit and investment of moneys received by or for the account of the Alien Property Custodian

(No. 2813)

By virtue of the authority vested in me by "An Act to define, regulate, and punish trading with the enemy, and

for other purposes," approved October 6, 1917, known as the "Trading with the enemy act," I hereby make the following orders, rules and regulations.

[fol. 134] (1) Definitions

(a) The word "person", as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation or body politic.

(b) The word "enemy", as used herein (including subsequent definitions) shall be deemed to mean either an "enemy" or "ally of enemy", as the case may be.

(c) The words "right", "title", "interest", "estate", "power", and "authority" of the enemy, as used herein, shall be deemed to mean respectively such right, title, interest, estate, power, and authority of the enemy as may actually exist and also such as might or would exist if the existing state of war had not occurred, and shall be deemed to include respectively the right, title, interest, estate, power and authority in law or equity or otherwise of any representative or of trustee for the enemy or other person claiming under or in the right of, or for the benefit of, the enemy.

(d) Any requirement made by the Alien Property Custodian pursuant to Section 7 subsection "c" of the "Trading with the enemy act" may be known as and called a demand and will be hereinafter referred to as a demand.

(2) Demands Pursuant to Section 7 Subsection "C"

(a) The Alien Property Custodian may make demand for the conveyance, transfer, assignment, delivery, and payment of any money or other property owing or belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy not holding a license granted by me or in the exercise of my power and authority, which the [fol. 135] Alien Property Custodian after investigation shall determine is so owing or so belongs or is so held, together with every right, title, interest, and estate of the enemy in and to such money or other property and every power and authority of the enemy thereover, including (but without limiting the generality of the foregoing) the power and authority to affirm, ratify, approve, revoke, repudiate

or disapprove, in whole or in part, and at any time or times, any power, agency, trust or other relation at the time existing, and also any act or omission theretofore done in the exercise of or pursuant to any power, agency, trust or other relation which the enemy could or might lawfully revoke, repudiate, disaffirm, affirm, ratify or approve, and also including (but without limiting the generality of the foregoing) the power and authority to direct, supervise, and control the future exercise of any power, agency, trust or other relation over such money or other property to the extent that the enemy could or might lawfully direct, supervise, and control the same. Or the Alien Property Custodian may qualify or limit any such demand in such manner to such extent as he may in any case see fit and (without limiting the generality of the power to qualify and limit demands) he may in any case demand all or only such power and authority over the money or other property as he may see fit without demanding any conveyance, transfer, assignment, delivery or payment of such money or other property or any other right, title, interest, or estate therein or thereto except such as may be included within the power and authority demanded in the particular case over such money or other property.

A demand for the conveyance, transfer, assignment, delivery and payment of money or other property unless expressly qualified or limited shall be deemed to include every right, title, interest, and estate of the money in and [fol. 136] to the money or other property demanded as well as every power and authority of the enemy thereover.

(b) Notice of any demand made by the Alien Property Custodian may be given to any person who, alone or jointly with others, may hold or have the custody or control of or may be exercising any right, power, or authority in or over or may be performing any duty concerning the money or other property mentioned in the demand; and, in any notice given, the Alien Property Custodian may require of the person notified the performance of any act or thing within the power of the person notified which may be necessary or proper to make the demand fully effective, or to establish proper acknowledgment, recognition, or evidence of the right, title, interest, and estate of the Alien Property Custodian in and to such money or other property and of the

power and authority of the Alien Property Custodian thereover, and it shall be the duty of any person so notified to perform any act or thing so required. Such notice may be given in person or by mail.

(c) When demand shall be made and notice thereof given, as hereinbefore provided, such demand and notice shall forthwith vest in the Alien Property Custodian such right, title, interest, and estate in and to and possession of the money or other property demanded and such power or authority thereover as may be included within the demand, and the Alien Property Custodian may thereupon proceed to administer such money and other property in accordance with the provisions of the "Trading with the enemy Act" and with any orders, rules, or regulations heretofore, hereby, or hereafter made by me or heretofore or hereafter made by the Alien Property Custodian.

[fol. 137] (3) Powers of Administration

(a) The Alien Property Custodian may appoint and clothe with necessary power and authority such agents, bailees, and attorneys in fact as he may find to be necessary or proper to carry out the provisions of the "Trading with the enemy act" and the the Executive orders, rules, and regulations heretofore, hereby, or hereafter made, and prescribe the duties and fix the compensation of such agents, bailees, and attorneys in fact; and any depositary designated by the Alien Property Custodian may be appointed as such agent, bailee or attorney in fact. And the Alien Property Custodian may require bonds of such agents, bailees and attorneys in fact and fix the penalty and conditions.

(b) The Alien Property Custodian may pay all reasonable and proper expenses which may be incurred in or about securing possession or control of money or other property and in or about collecting dividends, interest, and other income therefrom, and in otherwise protecting and administering the same. So far as may be, all such expenses shall be paid out of, and in any event recorded as a charge against, the estate to which such money or other property belongs.

(c) The Alien Property Custodian may authorize depositaries designated by him and agents, bailees, and attorneys in fact appointed by him to deduct all expenses authorized or approved by the Alien Property Custodian, including the compensation of such depositaries, agents, bailees, and attorneys in fact, from any moneys collected by them and the payment by them to the Alien Property Custodian or into the Treasury of the United States of the net amount remaining in their hands.

[fol. 138] (d) The Alien Property Custodian may exercise any right, power, or authority of the enemy, in, to and over corporate stock, shares or certificates representing beneficial interests owing or belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy, including (1) the right to receive all notices issued by the corporation, unincorporated association, company or trustee which issued such stock, shares or certificates, to the holders or owners of similar stock, shares or certificates, (2) the right to exercise all voting power appertaining to such stock, shares or certificates, and (3) the right to receive all subscription rights, dividends and other distributions and payments, whether of capital or income, declared or made on account of such stock, shares or certificates, regardless of whether or not such stock, shares or certificates be in the possession of the Alien Property Custodian and regardless of whether or not such stock, shares or certificates have been transferred to the Alien Property Custodian upon the books of the corporation, association, company or trustee issuing the same.

The Alien Property Custodian may nominate persons who may, when duly elected or appointed, serve as directors, officers or employees of any corporation whose corporate stock or shares, in whole or in part, are owing or belonging to, or are held for, by, on account of, or on behalf of or for the benefit of an enemy.

The Alien Property Custodian may demand the transfer of corporate stock, shares or certificates representing beneficial interests to be made upon the books of any corporation, unincorporated association, company or trustee, issuing the same, into the name of the Alien Property

Custodian or into the name of any depositary designated by the Alien Property Custodian for the account of the Alien Property Custodian, or, in the case of corporate stock [fol. 139] or shares, into the name of any other person for the purpose of qualifying such person to serve as a director of the corporation issuing such corporate stock or shares; and it shall be the duty of any corporation, unincorporated association, company, or trustee to comply with such demand when accompanied by the presentation of the certificates which represent such corporate stock, shares or beneficial interests. Provided that corporate stock or shares transferred into the name of any other person than the Alien Property Custodian or a designated depositary shall be indorsed by such person in blank and delivered to and held by the Alien Property Custodian by or a duly designated depositary.

(e) In respect of moneys, accounts payable, credits, notes or other obligations owing or belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy, whether the payment or delivery or the mere transfer and assignment thereof be demanded, the Alien Property Custodian may exercise discretion in enforcing payment, granting indulgence, making extension or accepting security, and in exercising any other right, power or authority of the enemy.

(f) The Alien Property Custodian may sell and deliver any commodity or other tangible property which may be perishable or which may in the preservation thereof involve expense. And the Alien Property Custodian may sell and deliver any rights appurtenant to the ownership of corporate stock, shares or certificates of beneficial interests in cases where such rights would lapse unless exercised within a limited time. The Alien Property Custodian may manage, conduct, and operate any business belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy in cases where the continuation of such [fol. 140] business may seem to be necessary to prevent waste or to protect such business. And the Alien Property Custodian may sell or otherwise dispose of such business

or any part thereof, or the assets or any part thereof, whenever such sale shall seem to be necessary to prevent waste or to protect such business. And in the management, operation, conduct, sale or other disposition of such business the Alien Property Custodian may exercise every right, power and authority of the enemy.

(g) In cases of liquidation of an estate belonging to a partnership, association, or unincorporated company in which an enemy may have an interest, the Alien Property Custodian may exercise every right, power, and authority of the enemy, including the right, power, and authority to sell the interest of the enemy in the event such sale seems necessary to prevent waste or to protect such interest.

(h) All sales made by the Alien Property Custodian may be conducted privately or publicly, with or without advertisement, and on such terms and conditions as to the Alien Property Custodian may seem proper.

In all cases of sales made by the Alien Property Custodian, all reasonable expenses incurred in and about such sales shall be deducted from the proceeds and the net amount remaining paid into the Treasury of the United States.

(i) The Alien Property Custodian is authorized to exercise any power conferred upon him by any license issued by me or in the exercise of the power and authority conferred upon me under the "Trading with the enemy Act" wherever such license involves any act or thing concerning any [fol. 141] money or other property owing or belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy.

(4) Statutory Powers of the Alien Property Custodian

Nothing herein contained is intended, nor shall anything herein contained be construed, to limit the powers conferred upon the Alien Property Custodian by the "Trading with the enemy Act."

(5) Deposit and Investment of Moneys Received by the Alien Property Custodian

There shall be deposited in the Treasury of the United States, through the office of the Secretary of the Treasury—

(a) Any and all moneys (including checks and drafts payable on demand) paid to or received by the Alien Property Custodian pursuant to the "Trading with the enemy Act;"

(b) Any and all moneys (including checks and drafts payable on demand) collected or received by the Alien Property Custodian, as dividends or interest or income that may become due upon any stocks, bonds, notes, time drafts, time bills of exchange, or other securities or property held by the Alien Property Custodian or by any depositary or depositaries designated as provided in said Act for the account of the Alien Property Custodian.

(c) Any and all moneys collected as the proceeds of any and all maturing obligations held by the Alien Property Custodian or by any such depositary or depositaries for the account of the Alien Property Custodian; and

[fol. 142] (d) Any and all moneys paid to or received by the Alien Property Custodian as the proceeds of any sale or sales, made at any time pursuant to such rules and regulations as the President shall prescribe, of any and all property or rights which shall come into the possession of the Alien Property Custodian in pursuance of the provisions of said act:

Provided, However, That the Alien Property Custodian may fix stated periods, not longer than quarter-yearly, for accounting by depositaries, agents, bailees, and attorneys in fact of all moneys received by them, and for the payment thereof by such depositaries, agents, bailees, and attorneys in fact to the Alien Property Custodian, who shall forthwith pay the same into the Treasury of the United States, as provided above, and that checks and drafts payable on demand received by the designated depositaries in payment

of dividends, interest and income property held by or for the account of the Alien Property Custodian may be collected by such depositaries for the account of the Alien Property Custodian, but that all other checks and drafts payable on demand shall be forthwith deposited by the Alien Property Custodian in the Treasury of the United States, as provided above.

Any and all moneys so deposited in the Treasury of the United States, as herein provided, as well as all moneys, if any, which may be paid to the Treasurer of the United States, as provided in section 12 of said act, and all interest, dividends or other income, if any, in respect of any property conveyed, transferred, assigned or delivered to the Treasurer of the United States, as provided in said section 12, shall be credited by the Treasurer of the United States to the Secretary of the Treasury "for account of the Alien Property Custodian."

Any and all money so deposited in the Treasury of the United States, as herein provided, together with any inter- [fol. 143] est or income received from the investment thereof, shall be subject to withdrawal by the Secretary of the Treasury for the purpose of making any payment or payments pursuant to the provisions of said act, and, until so withdrawn, may be invested and reinvested, from time to time, by the Secretary of the Treasury in United States bonds or United States certificates of indebtedness. The bonds and certificates of indebtedness, in which such moneys shall be so invested, shall be held by the Secretary of the Treasury for account of the Alien Property Custodian, subject to the provisions hereof and of said act and to such further orders, rules or regulations as may, from time to time, be prescribed by me.

All other Executive orders heretofore made are hereby amended and modified to such extent as may be necessary to conform with the provisions hereof.

Woodrow Wilson.

The White House, 26 February, 1918.

EXHIBIT H-5

Executive Order Revoking Power and Authority in Designated Officers under the Trading with the Enemy Act

(No. 2837)

By virtue of the power and authority vested in me by "An Act to define, regulate, and punish trading with the enemy and for other purposes," approved October 6, 1917, I hereby make the following orders and rules and regulations:

* * * * * * *

[fol. 144] Federal Trade Commission

II. I hereby revoke the power and authority vested in the Federal Trade Commission by Section XVII of the Executive Order of October 12, 1917, to issue licenses to any citizen of the United States or any corporation organized within the United States, to file or prosecute applications in the country of an enemy or ally of enemy for letters patent or for registration of trade-mark, print, label or copyright, and to pay any fees or agents' fees in connection therewith; or to pay to any enemy or ally of enemy any tax, annuity or fee in relation to patent, trade-mark, prints, labels and copyrights; and no such license shall be granted until further order.

Woodrow Wilson.

The White House, 11 April, 1918.

EXHIBIT H-6

Executive Order Prescribing Additional Rules and Regulations and Making Certain Determinations Respecting the Exercise of the Powers and Authority and the Performance of the duties of the Alien Property Custodian

(No. 2916)

By virtue of the authority vested in me by "An Act to define, regulate, and punish trading with the enemy, and

for other purposes," approved October 6, 1917, known as the "Trading with the Enemy Act," as amended by "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and prior fiscal years, [fol. 145] on account of war expenses and for other purposes," approved March 28, 1918, I hereby make the following orders, rules and regulations, and determinations.

Definitions

1. The word "person," as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation or body politic.

2. The word "enemy," as used herein, shall be deemed to mean either an "enemy" or "ally of enemy," as the case may be.

Powers of Management and Administration Including Sale or Other Disposition

The Alien Property Custodian shall have power, and he is authorized and directed, to hold, manage, administer, protect, preserve, control and sell or otherwise dispose of, in accordance with the following rules and regulations, any and all property other than money which has been or shall be conveyed, transferred, assigned, delivered, and/or paid over to him pursuant to the provisions of the Trading with the Enemy Act as amended and the Executive proclamations and orders issued pursuant thereto or which has been or shall be required so to be conveyed, transferred, assigned, delivered and/or paid over to him.

1. The Alien Property Custodian shall have the power and authority to do any and all things reasonable and proper in or about the custody, management, administration, protection, preservation, and control of any such property according to the nature and character of the property and the attendant circumstances, including (but with-[fol. 146] out limiting the generality of the foregoing) the power and authority to collect all bills, notes, accounts,

dividends, interest, rents, royalties, annuities and other receivables, and income and profits and accumulations and distribution of principal or income, to pay all rents, royalties, interest, and other accounts and liens or charges; to make repairs, additions and alterations to property, whether real or personal; to rent, lease or otherwise grant the use or right to use or occupy propety of any kind; to insure property against loss, and to cancel or surrender insurance policies and collect return premiums and surrender values, and to do any other act or thing with respect to insurance or insurance policies; to grant by lease, license or otherwise, the right to use or other rights under or in respect to patents, copyrights, trade marks, trade secrets and other similar rights; to vote in person or by proxy shares of stock or other beneficial interest in corporations, unincorporated associations, companies or trusts upon any questions at all times and upon all matters upon which any owner of such stock or other beneficial interest shall have the right to vote; including the power and authority to vote for or against and to take part in any sale, dissolution, consolidation, amalgamation or reorganization of any sort, of any such corporation, unincorporated association, company or trust, or of its assets, or any part thereof, and to exercise any rights or privileges that may be or become appurtenant to the ownership of such stock or other beneficial interest with like force and effect and under like circumstances in all respects as though the absolute owner thereof, to give any notices and file any papers or writings of any kind, proper or necessary for the creation, perfection, protection, liquidation or otherwise in respect of any claims, demands, choses-in-action or other rights of any [fol. 147] kind, and to settle, compromise and adjust claims, demands and choses-in-action; to intervene in any suit or proceeding and to file and maintain claims, demands and suits of all kinds in or before any court, board, commission or other body; to determine and pay all reasonable and proper expenses incurred in or about or with respect of the exercise of any of the powers and authority vested in the Alien Property Custodian or any depositary for him, including expenses that may be incurred in or about securing possession, custody or control of any such property,

and including also taxes and other charges heretofore or hereafter lawfully assessed upon or against such property by any body politic; provided that this shall not be construed to require the payment of any stamp or other taxes upon or on account of conveyance, transfer, assignment or delivery of property to the Alien Property Custodian or to any agent, attorney, bailee, nominee or depositary for him; and provided further that this shall not in any way affect the power of the Commissioner of Internal Revenue or any regulations made by him or under his authority.

2. Whenever any such money or other propetry or any part or parcel thereof is or shall be subject to any claim of lien, charge or incumbrance, or is or shall be held or retained adversely to the Alien Property Custodian or to any requirement with respect to such money or other property made by him, the Alien Property Custodian may compromise or settle such controversy and pay any such claim in any way that he shall decide to be proper and as though he were the absolute owner of the money or other property involved; and he shall have the power and authority to make any payment or payments necessary and to execute and deliver any instruments or writings necessary and proper to effect or evidence the same.

[fol. 148] 3. Whenever any such property or any part or parcel thereof shall be used or employed in the conduct or other operation of a mine, plant, factory, railroad or other transportation facility, warehouse, merchantile or trading establishment or any sort of a going business or undertaking, the Alien Property Custodian, in addition to the rights, powers and authority elsewhere herein conferred upon him, in respect of the property so used or employed, may continue the conduct or other operation of such business or undertaking; and for such purpose he shall have the right, power and authority to employ and discharge agents, attorneys, servants and other employees; to buy and sell supplies, materials and commodities required or necessary for the conduct of such business, or dealt in or handled thereby, or mined, produced, manufactured or created by it; to take out insurance; to require money owing by banks, trust companies or other depositaries on special or general deposit to be paid to him or upon his order; to collect debts and other receivables owing to the

said business or undertaking or to the former enemy owner or owners thereof and created out of or by the operation of such business or undertaking, and also debts, accounts and other receivables accruing or arising out of the conduct or other operation of such business or undertaking, by the Alien Property Custodian or under his direction or authority; to pay the wages and salaries of agents, attorneys, servants and other employees, and rents, royalties, and other current accounts and liabilities; to intervene in any suit or action pending in any court or before any board, commission or other body, in which such business or undertaking or any of the property or assets thereof shall be involved or concerned and to prosecute or defend, as the case may be; to file, prosecute and maintain in the name of [fol. 149] the Alien Property Custodian or otherwise as may be proper; any claim or suit arising out of or based upon transactions had prior or subsequent to the time when such property was conveyed, transferred, assigned, delivered and/or paid over to the Alien Property Custodian or was required so to be, but growing out of the conduct or operation of such business or undertaking or any other use, custody, control or management of any property or assets thereof; and generally to manage, administer, preserve, conduct, operate and control such business or undertaking and any or all parts or parcels and assets thereof as though the absolute owner, either in the name of the Alien Property Custodian or otherwise as he shall determine.

4. The Alien Property Custodian may appoint agents, attorneys, bailees, depositaries and/or managers who, under his direction and control and within the limits of the authority conferred by him, shall be authorized and directed to hold, manage, administer, protect, preserve and otherwise control property conveyed, transferred, assigned, delivered or paid over to him or required so to be, or any part or parcel thereof; and they may be authorized and directed to continue the conduct or other operation of any going business or other undertaking which the Alien Property Custodian himself, as provided elsewhere herein, could continue. Such agents, attorneys, bailees, depositaries and managers shall have and exercise the rights, powers and authority which shall be from time to time conferred upon him or them by the Alien Property Custodian;

and such rights, powers and authority may be enlarged, restricted or revoked by the Alien Property Custodian at any time and without giving any notice or reason therefor; and the remuneration of all such agents, attorneys, bailees, [fol. 150] depositaries and managers shall be fixed by the Alien Property Custodian and may be increased or reduced at any time.

5. The Alien Property Custodian shall have full power and discretion with respect to property to be sold, and may sell any property or properties as an entirety or in such groups or parcels and at such time or times as he shall determine, and without reference to the previous enemy or ally of enemy ownership thereof. Whenever any such property shall be used or employed in the conduct or other operation of any mine, plant, factory, railroad or other transportation facility, mercantile establishment or any sort of going business or undertaking the Alien Property Custodian may sell such property as a going business or undertaking and may include not only the tangible property but any and all patents, trade marks, trade names, good will and other intangible rights and assets; and any number of such going businesses or undertakings may be sold together as above specified.

6. Whereas, said Trading With the Enemy Act as amended provides that "any property sold, except when sold to the United States, shall be sold only to American citizens at public sale to the highest bidder, after public advertisement of the time and place of sale, which shall be where the property or a major portion thereof is situated, unless the President, stating the reasons therefor in the public interest shall otherwise determine."

Now therefore I do thus determine otherwise as follows:

(a) Shares of stock or other beneficial interest in a corporation, unincorporated association, company or trust, and claims, receivables and intangibles of all kinds may be advertised and sold wherever the Alien Property Custodian shall determine; and it shall be immaterial whether such [fol. 151] shares of stock or other beneficial interest and such claims, receivables and intangibles be represented or evidenced by certificates or instruments or writings of any kind, and whether the Alien Property Custodian shall or

shall not have possession or control thereof in the event that the same shall be thus represented or evidenced.

(b) Any corporation incorporated within and under the authority of the laws of any state or territory of the United States or of any of its insular possessions shall be allowed to bid at any sale of any such property, but the Alien Property Custodian shall have the right to exclude from bidding at any such sale and/or from purchasing or otherwise acquiring property from him directly or indirectly, any corporation which he shall after investigation determine to be controlled, managed or operated wholly or mainly by or for the account or benefit of a person or persons not a citizen or citizens of the United States or of its insular possessions.

(c) The Alien Property Custodian, upon order of the President stating the reasons therefor, shall have the right to reject all bids for any property thus sold and to resell such property at public sale or otherwise as the President may direct; but the Alien Property Custodian may at or before any sale, by public announcement or by publication, fix a period after the expiration of which the right thus to reject all bids and to resell such property will not be exercised.

My reasons for the foregoing determinations in the public interest are:

(a) That such sales may be made at the place of favorable demand and under the best circumstances to secure the market price therefor.

[fol. 152] (b) That bidders able to purchase and pay for the properties to be sold may be secured.

(c) That the powers of sale given to the Alien Property Custodian may be effectively exercised by him.

7. Any property sold by the Alien Property Custodian either at public or private sale may be sold for cash or upon credit; and in the latter event such security for the payment of that portion of the purchase price remaining unpaid may be taken as he shall deem proper in the premises. He shall be authorized to set a minimum or upset price upon any property offered for sale by him; to fix

and prescribe the terms and conditions upon which bids will be received; to determine generally and specially qualifications to be met by persons offering to bid; to require deposits from prospective bidders; to determine generally or specially the nature and extent of information concerning any property or properties offered or to be offered for sale which shall be given prospective bidders, and the inspection thereof which shall be allowed; to have made auditor's reports and appraisals of property or properties offered or to be offered for sale; and to make and establish general and special terms and conditions to govern any and all sales to be made by him. Any property or properties thus sold may be sold subject to or free from any or all debts, claims, obligations and liabilities of all kinds created or arising out of or in respect of, any such property or properties or the conduct or other operation of any such business or other undertaking by the Alien Property Custodian or otherwise; and subject to or free from liens, charges or incumbrances; and payment of such debts, claims, obligations, liabilities and liens, charges and incumbrances, and of all expenses of such sale or sales may [fol. 153] be made out of the proceeds from such sale or sales, or may be required to be made or assumed by the purchaser, as the Alien Property Custodian shall determine.

8. All costs and expenses incurred by reason of or in respect of, and all claims and demands of every kind, character and description based upon or arising out of, the custody, management, administration, protection, preservation and control of any such property and the conduct or other operation of any such going business or other undertaking and the sale or other disposition of any such property, shall be limited to and paid or satisfied out of only the property or business or undertaking involved and out of which, on account of which, or in respect of which such cost, expenses, claim or demand shall have been incurred and shall have arisen or been created; provided that whenever such property or the income therefrom or the assets of any such going business or other undertaking shall be insufficient therefor, such cost, expenses, claim or demand shall be charged thereto, but may be paid or satisfied out of money or other property received from, or as

the property of, the same enemy. Neither the Alien Property Custodian nor any agent, attorney, bailee, manager or depositary appointed by him shall be liable personally to any one for or on account of anything done or omitted in respect of, or *or* any debt or other obligation of any kind or character owing, created or growing out of or in any other way arising from, any such property or the custody, management, administration, protection, preservation, control and/or sale or other disposition thereof, and/or from the conduct or other operation of any going business or undertaking; except in the event of intentional injury or fraudulent misconduct by the person attempted to be charged with liability.

[fol. 154] 9. The Alien Property Custodian and agents, attorneys, bailees, managers and depositaries for him, within the limits of the authority granted by him, shall have power and authority to do any and all things reasonable or proper in or about or in respect of the exercise of any of the powers and authority specifically granted above; and in addition are authorized and directed hereby to manage all such property and to do any act or thing in respect thereof or make any disposition thereof or any part thereof by sale or otherwise and exercise any rights or powers which may be or become appurtenant thereto or to the ownership thereof, in like manner as though the Alien Property Custodian were the absolute owner thereof, subject to no limitations or restrictions other than those specifically set forth herein or in said "Trading With the Enemy Act," as amended or any prior Executive orders issued pursuant thereto not in conflict herewith.

Power to Issue Requirements not Inconsistent with Licenses Granted under the Authority of the President.

1. Whenever the Alien Property Custodian shall after investigation determine that any money or other property, including any going business or other undertaking, which is being held, managed, used or employed under a license granted by the President, or in the exercise of the power and authority conferred upon the President by said "Trading With the Enemy Act" as amended, is owing or belonging to or held for, by, on account of, on behalf of, or

for the benefit of an enemy or ally of enemy, and such license provides as one of its terms or conditions that such property shall, upon demand or requirement of the Alien Property Custodian, be conveyed, transferred, assigned, [fol. 155] delivered, and/or paid over to him, the Alien Property Custodian may, without the revocation of such license, require that said money or other property or any part or parcel thereof be conveyed, transferred, assigned, delivered or paid over to him; subject, however, to the continued exercise of such license, but under his supervision or under such other supervision as he may prescribe, and for such period of time or until the happening of such event as he shall prescribe. Whenever such money or property or any part thereof, at the time such requirement is made, shall be used or employed in or about the conduct or management of any mine, plant, factory, railroad or other transportation facility, warehouse, mercantile or trading establishment or any sort of a going business or undertaking, the Alien Property Custodian may require that such money or other property and/or the proceeds from the conduct or management of such business be conveyed, transferred, assigned, delivered or paid over to him, subject to the continued exercise of such license and the continued conduct or management of such business or other undertaking as above provided; and he may leave all or such part of the money or other property of such business or other undertaking in the possession of the licensee or the agent or representative of the licensee to be used, disposed of, and accounted for, in the continued exercise of such license. Any requirement made by the Alien Property Custodian pursuant to the provisions hereof shall be subject to modification or change by him at any time prior to the final compliance therewith. Any of such property other than money, including such going business or undertaking, may be advertised and sold by the Alien Property Custodian, subject to the exercise of any such license, but for the account of the Alien Property Custodian or for the account of the purchaser as the Alien Property Custodian [fol. 156] may determine; and until the purchaser of such property shall be placed in the possession thereof or during such other period as the Alien Property Custodian may determine.

Effect Upon the Statutory Powers of the Alien Property Custodian and Upon Prior Executive Orders

1. Nothing herein contained shall limit or shall be construed to limit, in any way the rights, powers and authority conferred upon the Alien Property Custodian by the "Trading With the Enemy Act" and the amendments thereto and the Executive orders heretofore issued pursuant thereto.

2. All Executive orders heretofore made are amended and modified hereby to such an extent as may be necessary to conform with the provisions hereof; but with this exception, all of such orders in force and effect at the time this order is issued are expressly ratified and continued in full force and effect.

Woodrow Wilson.

The White House, 16 July, 1918.

EXHIBIT H-7

Executive Order

(No. 3016)

By virtue of the authority vested in my by "An Act to define, regulate and punish trading with the enemy, and for other purposes", known as the "Trading with the enemy Act", approved October 6, 1917, and the amendments thereto, I hereby made the following orders and rules and regulations:

[fol. 157] I. I hereby vest in the Alien Property Custodian the executive administration of all of the provisions of sub-section (c) of section 7 of said "Trading with the enemy Act" as amended by an Act entitled "An Act making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years, on account of war expenses, and for other purposes", approved November 4, 1918; and said Alien Property Custodian shall have the power and authority to prescribe forms and procedure for the exercise of the powers and authority vested in him.

II. In the executive administration of said subsection (c) of section 7 of said "Trading with the enemy Act", the Executive Orders heretofore issued by me by virtue of the authority vested in me by said "Trading with the enemy Act" shall apply; and said Alien Property Custodian is hereby vested with all of the powers and authority heretofore granted to him or vested in him by all Executive Orders heretofore issued by me not inconsistent with this Order.

III. The power and authority heretofore vested in the Federal Trade Commission to issue, pursuant to the provisions of sub-section (c) of section 10 of the "Trading with the enemy Act", or to withhold or refuse a license to any citizen of the United States or any corporation organized within the United States, to manufacture or cause to be manufactured, a machine, composition of matter or design, or to carry on or cause to be carried on a process under any patent, or to use any trademark, print, label or copyrighted matter owned or controlled by an enemy or ally of enemy, is hereby continued in full force and effect, provided:

(1) That said Federal Trade Commission shall not have the power or authority to issue any such license whenever the patent, trademark, print, label or copyright with respect [fol. 158] to which application for such license is made, shall have been conveyed, transferred, assigned or delivered to the Alien Property Custodian, in pursuance of his requirement, or seized by him; and whenever any patent, trademark, print, label or copyright shall be or shall have been conveyed, transferred, assigned or delivered to the Alien Property Custodian, in pursuance of his requirement, or seized by him, the Federal Trade Commission shall have no further power or authority with respect thereto.

(2) That said Federal Trade Commission shall notify the Alien Property Custodian of all applications made to it for licenses under said sub-section (c) of Section 10 of the Trading with the enemy Act, so that he may, if he so desires, appear at any hearing and object to the issuance thereof. The Alien Property Custodian, in lieu of appearance, may file with the Federal Trade Commission objections to the issuance of any such license. In no event shall any license be issued until after the expiration of

fifteen days after such notice of the application shall have been given to the Alien Property Custodian.

IV. The Alien Property Custodian is hereby authorized to take all measures and do all things that may be necessary or expedient to administer the powers and authority conferred by this Order.

V. I hereby vest in Frank L. Polk all power and authority conferred upon the President by the provisions of Section 12 of said "Trading with the enemy Act" as amended, other than the Executive Administration of the provisions of said Section 12 pertaining to the designation of a Depositary or Depositaries, which Executive Administration was vested in the Alien Property Custodian by Executive Order of October 29, 1917, and which Executive Order is [fol. 159] expressly ratified and continued in full force and effect; provided that this order shall not be construed to revoke or cancel the power and authority in the Attorney General by Paragraph XXXII of the Executive Order of October 12, 1917.

Nothing in this Order shall nullify or impair any license heretofore granted by the Federal Trade Commission, pursuant to the provisions of Section 10 of an Act of Congress entitled "An Act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917.

Woodrow Wilson.

The White House, 3 December, 1918.

EXHIBIT H-8

Revesting in Designated Officers Certain Powers under the Trading with the Enemy Act

By virtue of the power and authority vested in me by "An Act to define, regulate and punish trading with the enemy and for other purposes," approved October 6, 1917, I hereby rescind, as of the 14th day of July, 1919, the Executive Order of April 11, 1918, which revoked (1) the power and authority vested in the Secretary of the Treas-

ury by Section XI of the Executive Order of October 12, 1917, to issue licenses to send, take or transmit out of the United States any letter or other writing, book, map, plan or other paper, picture, or any telegram, cablegram, or wireless message, or other form of communication intended for or to be delivered, directly or indirectly, to an "enemy" or "ally of enemy", in any way relating to letters patent, [fol. 160] or registration of trade-mark, print, label or copyright, or to any application therefor, and (2) the power and authority vested in the Federal Trade Commission by section XVII of the Executive Order of October 12, 1917, to issue licenses to any citizens of the United States or any corporation organized within the United States, to file or prosecute applications in the country of an "enemy" or "ally of enemy" for letters patent or for registration of, trade-mark, print, label, or copyright, and to pay any fees or agents' fees in connection therewith; or to pay to any "enemy" or "ally of enemy" any tax, annuity or fee in relation to patents, trade-marks, prints, labels and copyrights; and I do hereby order that on and after July 14, 1919, licenses to perform the acts hereinabove described may be issued under section XI and XVII of the Executive Order of October 12, 1917, by the officials in whom the authority to issue such licenses was by said Order vested and I do hereby further order that any and all licenses issued on or after July 14, 1919, which, except for the above mentioned order of April 11, 1918, would by their terms authorize any of the acts hereinabove described, are hereby confirmed and approved, and all such licenses shall be deemed to have full force and effect according to the terms thereof, in like manner as though said Order of April 11, 1918, had been rescinded prior to July 14, 1919.

Woodrow Wilson.

The White House, 25 November, 1919.

[fol. 161] EXHIBIT H-9

Order concerning the sale, transfer, and release of certain rights under letters patent, trade-marks, and similar rights determined to belong to or to be held for, by, on account of, or on behalf of or for the benefit of persons determined to be enemies not holding a license or licenses granted by the President within the purview of the Trading with the Enemy Act and the amendments thereto

By virtue of the authority vested in the President by an act of Congress entitled "An act to define, regulate, and punish trading with the enemy and for other purposes," approved October 6, 1917, known as the "Trading with the enemy Act," and the amendment to such act embodied in "An Act making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June 30th, 1918, and prior fiscal years on account of war expenses and for other purposes," approved March 28, 1918, and the amendment to such act embodied in "An act making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years on account of war expenses and for other purposes," approved November 4, 1918, to make certain orders such as that herein contained, which authority has been delegated to grant free licenses to the United States for any use the President under the third day of December, 1918, I hereby, in the public interest, make the following determination and order:

The Alien Property Custodian may release and discharge the United States of America and any department thereof [fol. 162] upon such terms and conditions as to the Alien Property Custodian may seem proper, from any and all claims and demands arising from any alleged infringements of the letters patent, trade-marks, and rights under letters patent and trade-marks hereinafter referred to.

The Alien Property Custodian may sell at private sale without public or other advertisement to The Chemical Foundation (Inc.), a corporation organized and existing under and by virtue of the laws of the State of Delaware

at such place and upon such terms and conditions as to the Alien Property Custodian or his authorized agent may seem proper, all of the letters patent, trade-marks, and rights under letters patent and trade-marks, including all profits and damages recoverable at law or in equity for the past infringement thereof which the Alien Property Custodian may seize or may have seized upon the provisions of the said Trading with the enemy Act and the amendments thereto now or hereafter enacted and which he from time to time shall determine relate to the objects and purposes of said The Chemical Foundation (Inc.) as expressed and defined by its charter.

My reasons in the public interest for the foregoing determination, order, rule, and regulation, are:

First. Said letters patent, trade-marks, and similar rights cannot be sold to the best advantage at public sale after public or other advertisement.

Second. The Chemical Foundation (Inc.) has been incorporated for the purpose of holding letters patent, trade-marks, and similar rights relating to the chemical and allied sciences as a trustee for American industry, for the purpose of the Americanization of such industries as may be affected thereby, of eliminating alien interests hostile to said America industries and of the advancement of chemical and allied industry in the United States. The [fol. 163] Chemical Foundation (Inc.) is obligated to grant nonexclusive licenses upon equal terms at a uniform royalty to qualified American manufacturers and is empowered to grant free licenses to the United States for any use the United States may desire to make of the inventions covered by said letters patent and similar rights.

Third. The public interest will be best served by a wide use of the inventions covered by said letters patent and similar rights and such wide use can be most readily promoted by the licenses which the said The Chemical Foundation (Inc.) is by its charter obligated to grant.

Fourth. A private sale will prevent said letters patent, trade-marks, and similar rights from falling into the hands of purchasers who would be unwilling or unable to put the

inventions covered thereby into use, or would use them for purely speculative purposes.

Fifth. It would be impossible to make a public sale of the said letters patent, trade-marks, and similar rights so as to secure the foregoing benefits to the public.

Sixth. Unnecessary expense, delay and inconvenience may be avoided by a private sale.

Done in the District of Columbia this the 26th day of February, in the year of our Lord one thousand nine hundred and nineteen, and of the independence of the United States of America, the one hundred and forty-third.

Frank L. Polk.

[fol. 164] EXHIBIT H-10

An order concerning the sale, transfer, and release of certain copyrights, applications for letters patent, and applications for the registration of trade-marks and copyrights determined to belong to or to be held for, by, on account of, or for the benefit of persons determined to be enemies not holding a license or licenses granted by the President within the purview of the Trading with the Enemy Act and the amendments thereto

By virtue of the authority vested in the President by an act of Congress entitled "An act to define, regulate, and punish trading with the enemy and for other purposes," approved October 6, 1917, known as the "Trading with the enemy Act," and the amendment to such act embodied in "An Act making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June 30th, 1918, and prior fiscal years on account of war expenses and for other purposes," approved March 28, 1918, and the amendment to such act embodied in "An act making appropriation to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years on account of war expenses and for other purposes," approved November 4, 1918, to make certain orders such as that herein contained, which authority has been delegated

to me by the Executive order No. 3016 and signed by the President under the third day of December, 1918, I hereby, in the public interest, make the following determination and order:

The Alien Property Custodian may release and discharge the United States of America and any department thereof [fol. 165] upon such terms and conditions as to the Alien Property Custodian may seem proper from any and all claims and demands arising from any alleged infringement of the copyrights hereinafter referred to,

The Alien Property Custodian may sell at private sale without public or other advertisement to The Chemical Foundation (Inc.), a corporation organized and existing under and by virtue of the laws of the State of Delaware at such place and upon such terms and conditions as to the Alien Property Custodian or his authorized agent may seem proper, all of the copyrights, the certificates of registration thereof, and the publications upon which said registrations were granted, applications for letters patent and for the registration of trade-marks and copyrights and all rights thereunder which the Alien Property Custodian may seize or have seized under the provisions of the said "Trading with the enemy Act" and the amendments thereto now or hereafter enacted and which he from time to time shall determine relate to the objects and purposes of said The Chemical Foundation (Inc.) as expressed and defined by its charter.

My reasons in the public interest for the foregoing determination, order, rule, and regulations, are:

First. A similar order, rule and regulation relating to letters patent, trade-marks, and similar rights has been made by me the 26th day of February, 1919, and this order is supplemental thereto and necessary to fully carry out the objects and purposes of said order of February 26, 1919.

Second. Said copyrights, applications for letters patent, and for the registration of trade-marks and copyrights cannot be sold to the best advantage at public sale after public or other advertisement.

Third. The Chemical Foundation (Inc.), has been incorporated for the purpose of holding letters patent, trade-

[fol. 166] marks, and similar rights relating to the chemical and allied sciences as a trustee for American industry, for the purpose of the Americanization of such industries as may be affected thereby, of eliminating alien interests hostile to said American industries, and of the advancement of chemical and allied industries in the United States.

Fourth. The public interest which will be best served by the administration by The Chemical Foundation (Inc.), of the letters patent, trade-marks, copyrights, and applications therefor and similar rights permitted to be sold to it by this order and by my order of the 26th day of February, 1919.

Fifth. A private sale will prevent said copyrights, applications for letters patent and for the registration of trade-marks and copyrights from falling into the hands of purchasers who would be unwilling or unable to carry out the purposes of The Chemical Fundation (Inc.), or would use the copyrights, applications for letters patent and for the registration of trade-marks and copyrights for purely speculative purposes.

Sixth. It would be impossible to make a public sale of the said copyrights, letters patent and application for the registration of trade-marks and copyrights so as to secure the benefits to the public which a sale to The Chemical Foundation (Inc.), would secure to the public.

Seventh. Unnecessary expense, delay and inconvenience may be avoided by a private sale.

Done in the District of Columbia, this 5th day of April, in the year of our Lord one thousand nine hundred and nineteen and of the Independence of the United States of America, the one hundred and forty-third.

(Signed) Frank L. Polk.

[fol. 167] IN UNITED STATES DISTRICT COURT

No. 487, No. 492, No. 494, No. 495

[Titles omitted]

STIPULATION AS TO FACTS—Filed April 30, 1928

[fol. 168] For purposes of the trial of the above-entitled suits the following are accepted and agreed to be facts, the proof whereof by any party is dispensed with, each party reserving, however, all proper objections to the introduction of any thereof as evidence:

I. The Chemical Foundation, Incorporated, is and during all the times herein concerned was a corporation and citizen of the State of Delaware, having its principal office in the City of Wilmington in said state.

II. Frank White is the Treasurer of the United States and resides and has his office in the City of Washington, District of Columbia.

III. E. I. du Pont de Nemours and Company is and during all the times herein concerned was a corporation of the State of Delaware, having its principal place of business at Wilmington in said state.

IV. Farbwerke vormals Meister Lucius & Bruning is and during all the times herein concerned was a corporation organized under the laws of Germany, having its principal place of business at Hochst-on-the-Main, Germany.

V. Deutsche Gold & Silber Scheide Anstalt vorm. Roessler is and at all the times herein concerned was a corporation organized under the laws of Germany, having its principal place of business at Frankfort-on-the-Main, Germany.

[fol. 169] VI. Badische Anilin- & Soda-Fabrik is and at all the times herein concerned was a corporation organized under the laws of Germany, having its principal place of business at Ludwigshafen-on-the-Rhine, Germany.

VII. Letters Patent No. 680,395, entitled "Process of Making Indoxyl Derivatives," were lawfully granted and issued by the United States Patent Office under date of

August 13, 1901, to said Deutsche Gold & Silber Scheide Anstalt vorm. Roessler, the application for said letters patent having theretofore been assigned to said corporation by the inventor, Johannes Pfleger, of Frankfort-on-the-Main, Germany, the instrument of assignment being dated June 25, 1901, and duly recorded in the United States Patent Office.

VIII. Letters Patent No. 718,340, entitled "Process of Making Cyan-Methyl Derivatives of Aromatic Amids," were lawfully granted and issued by the United States Patent Office under date of January 13, 1903, to said Badische Anilin- & Soda Fabrik, the application for said letters patent having theretofore been assigned to said corporation by the inventor, Otto J. Graul, of Ludwigshafen-on-the-Rhine, Germany, the instrument of assignment being dated January 17, 1902, and duly recorded in the United States Patent Office.

IX. Letters Patent No. 868,294, entitled "Process of Producing Phenylglycin and its Homologues," were lawfully granted and issued by the United States Patent Office under date of October 15, 1907, to said Farbwerke vorm. Meister, Lucius & Bruning, the application for said letters patent having theretofore been assigned to said corporation by the inventor, Robert Schmidlin, of Hochst-on-the-Main, Germany, the instrument of assignment being dated May 3, 1906, and duly recorded in the United States Patent Office.

X. Each of the aforesaid letters patent was valid and copies of the specifications thereof are annexed to the Bill [fol. 170] of Complaint of The Chemical Foundation, Inc., as "Exhibit A-1," "Exhibit A-2," and "Exhibit A-3," and by reference are hereby made a part hereof.

XI. Under authority of and in conformity with the Act of Congress known as the "Trading with the Enemy Act," and the amendments thereto, and the Executive Orders issued by the President of the United States in pursuance thereof, the Federal Trade Commission on the 21st day of January, 1918, duly granted a certain license under the aforementioned letters patent, (known and identified as License No. 19) to said E. I. du Pont de Nemours & Com-

pany, the terms and conditions of which license are particularly set forth in the instrument of license, a copy of which is annexed to the bill of complaint of The Chemical Foundation, Inc., as "Exhibit B" and by reference is hereby made a part hereof.

XII. Said License No. 19 provided, among other things, that said E. I. du Pont de Nemours & Company should pay to the Alien Property Custodian, semi-annually, a royalty of 5 per cent of the net profit derived from the sale of the products included in said license. On January 14, 1920, the Federal Trade Commission, acting under authority as aforesaid, by order duly amended said license as to provide that from on and after August 1, 1919, the royalty payable thereunder should be at the rate of 2 per cent of the gross amounts received by the licensee, E. I. du Pont de Nemours & Company, from the sale of the products included in said license, as more fully set forth in the said order. A copy of said order is annexed to the bill of complaint of The Chemical Foundation, Inc., as "Exhibit C" and by reference is hereby made a part hereof.

XIII. On September 1, 1920, the Federal Trade Commission, acting under authority as aforesaid, by order duly [fol. 171] cancelled and terminated said license, as more fully set forth in said order. A copy of said order is annexed to the bill of complaint of The Chemical Foundation, Inc., as "Exhibit E" and by reference is hereby made a part hereof.

XIV. Said license authorized said E. I. du Pont de Nemours & Company to use and employ, in addition to the above-mentioned letters patent, such other inventions owned or controlled by an enemy or ally of enemy as might be found desirable in order to make, use and vend the group of dyes known as indigo and its derivatives, as is more particularly set forth in said license. The said E. I. du Pont de Nemours & Company did not, under the authority of these provisions of the said license, use or employ any such other inventions.

XV. Subsequent to the issuance of said License No. 19, but prior to its cancellation as aforesaid, the Alien Property Custodian, acting under authority of and in conform-

ity with the said "Trading with the Enemy Act," and the amendments thereto, the Executive Orders and Proclamations issued by the President of the United States in pursuance thereof, after investigation duly determined that said Deutsche Gold & Silber Scheide Anstalt vorm. Roessler, and said Badische Anilin and Soda Fabrik, and said Farbwerke vorm. Meister, Lucius & Bruning were severally enemies (as defined in the said "Trading with the Enemy Act" as amended) not holding licenses granted by the President of the United States within the purview of said act as amended and said orders and proclamations, and that the said Letters Patent Nos. 680,395, 718,340 and 868,294, and every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof respectively be- [fol. 172] longed to, or were held, on account of, or on behalf of or for the benefit of said enemies, and duly seized severally the said letters patent and every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof; the instrument of seizure covering Letters Patent No. 680,395 and appurtenant rights and benefits being dated March 22, 1919 and recorded March 26, 1919 in the United States Patent Office; the instrument of seizure covering Letters Patent No. 718,340 and appurtenant rights and benefits being dated February 3, 1919 and recorded February 21, 1919 in the United States Patent Office; the instrument of seizure covering Letters Patent No. 868,294 and appurtenant rights and benefits being dated March 22, 1919 and recorded March 26, 1919 in the United States Patent Office; all of which more particularly appears in the said instruments of seizure, copies of which are hereto attached, made a part hereof and marked respectively "Exhibit D-1," "Exhibit D-2," and "Exhibit D-3."

XVI. The aforesaid instruments of seizure covering Letters Patent 680,395 and 868,294 and appurtenant rights and benefits (Exhibits D-1 and D-3) disclose that the seizures thereby made were made "subject to the rights of E. I. du Pont de Nemours & Company, Wilmington, Delaware,"

this language referring solely to such rights under these letters patent as were enjoyed by said E. I. du Pont de Nemours & Company under the aforesaid License No. 19.

XVII. Thereafter, the Alien Property Custodian acting under like authority and under authority of certain orders dated February 26, 1919, and April 5, 1919, issued by Frank L. Polk as delegate of the President of the United States, duly sold to said The Chemical Foundation, Incorporated, the aforesaid letters patent (among others), together with [fol. 173] all claims and demands for profits and damages recoverable at law or in equity for the past infringements thereof against every person, firm, corporation or government except the Government of the United States of America, and subject only to the provisions of a certain release to the United States of America and to the rights of citizens of the United States or of friendly nations, as set forth in the requirements or demands for certain of the letters patent and other properties concerned; all of which is more particularly set forth in the instrument of assignment dated April 10, 1919, which was duly recorded in the United States Patent Office, and a copy of which with the pertinent excerpts from the schedules thereto attached and referred to therein, is *is* hereto annexed, made a part hereof and marked "Exhibit F-2."

A copy of the release from the Alien Property Custodian to the United States of America referred to in the aforementioned instrument dated April 10, 1919, is hereto annexed, made a part hereof and marked exhibit F-2."

The only rights of citizens of the United States or of friendly nations referred to in said instrument dated April 10, 1919 herein concerned are those of E. I. du Pont de Nemours & Company, which rights, as above stated, are limited to those this company enjoyed by virtue of said License No. 19.

XVIII. Thereafter the President of the United States, by virtue of authority vested in him by the provisions of said "Trading with the Enemy Act," as amended, by an Executive Order dated February 13, 1920, duly ratified and confirmed the sales made by the Alien Property Custodian to the said The Chemical Foundation, Incorporated, and authorized the Alien Property Custodian to ratify and con-

firm such sales by the execution and delivery of a suitable instrument of ratification; all of which is more particularly [fol. 174] set forth in said Executive Order, a copy of which is hereto attached, made a part hereof and marked "Exhibit G-1." The Alien Property Custodian, acting under the authority aforesaid and under the last mentioned Executive Order of the President of the United States, duly ratified and confirmed the said sales to the said The Chemical Foundation, Incorporated, by a suitable instrument of ratification; such instrument being dated March 1, 1921, and duly recorded in the United States Patent Office, and a copy thereof being hereto annexed, made a part hereof and marked "Exhibit G-2."

XIX. Annexed hereto, made a part hereof and marked with the exhibit numbers hereinafter designated are the copies of the following:

Exhibit H-1. Excerpts from Executive Order issued by President Wilson on October 12, 1917.

Exhibit H-2. Executive Order issued by President Wilson on October 29, 1917.

Exhibit H-3. Executive Order issued by President Wilson on February 5, 1918.

Exhibit H-4. Executive Order issued by President Wilson on February 26, 1918.

Exhibit H-5. Excerpts from Executive Order issued by President Wilson on April 11, 1918.

Exhibit H-6. Executive Order issued by President Wilson on July 16, 1918.

Exhibit H-7. Executive Order issued by President Wilson on December 3, 1918.

Exhibit H-8. Executive Order issued by President Wilson on November 25, 1919.

Exhibit H-9. Executive Order issued by Honorable Frank L. Polk, the Acting Secretary of State, on February 26, 1919.

Exhibit H-10. Executive Order issued by Honorable Frank L. Polk, the Acting Secretary of State, on April 5, 1919.

[fol. 175] XX. The "end of the war" referred to in Section 2 and Subsection (f) of Section 10 of the "Trading with the Eenemy Act," as amended, occurred on July 2,

1921, and each of the above-mentioned suits was filed within the expiration of one year thereafter.

(Sgd.) Wm. G. Mahaffy, Solicitor for The Chemical Foundation, Incorporated. (Sgd.) J. P. Laffey, Solicitor for E. I. du Pont de Nemours & Co. (Sgd.) Chas. F. Curley, Solicitor for Farbwerk vormals Meister Lucius & Bruning. (Sgd.) Chas. F. Curley, Solicitor for Deutsch Gold & Silber Scheide Anstalt vorm. Roessler. (Sgd.) Chas. F. Curley, Solicitor for Badische Anilin & Soda-Fabrik. (Sgd.) Leonard E. Wales, (Sgd.) Thomas E. Rhodes, Solicitors for Frank White, as Treasurer of the United States.

(Note.—Exhibits marked D-1, D-2, D-3, F-1, F-2, G-1, G-2, H-1, H-2, H-3, H-4, H-5, H-6, H-7, H-8, H-9, and H-10, annexed to original of foregoing stipulation the same as Exhibits similarly numbered and annexed to stipulation captioned in Cause No. 487, and not reprinted here.)

[fol. 176] In United States District Court for the District of Delaware

No. 487. In Equity

The Chemical Foundation, Incorporated, Plaintiff,

v.

E. I. du Pont de Nemours and Company (a Corporation) and Frank White, as Treasurer of the United States, Defendants

No. 492. In Equity

Farbwerke Vormals Meister, Lucius & Bruning, Plaintiff,

v.

E. I du Pont de Nemours and Company (a Corporation) and Frank White, as Treasurer of the United States, Defendants

No. 494. In Equity

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORMALS ROESSLER, Plaintiff,

v.

E. I. DU PONT DE NEMORS AND COMPANY (a Corporation) and Frank White, as Treasurer of the United States, Defendants

[fol. 177] No. 495. In Equity

BADISCHE ANILIN & SODA FABRIK, Plaintiff,

v.

E. I. DU PONT DE NEMOURS AND COMPANY (a Corporation) and Frank White, as Treasurer of the United States, Defendants

OPINION—Filed Nov. 16, 1928

The bill of complaint in each of these four suits consolidated for trial, was filed against E. I du Pont de Nemours and Company and Frank White as Treasurer of the United States, to recover from the corporate defendant under Sec. 10 (f) of the "Trading with the Enemy Act," 40 Stat. 411, a reasonable royalty for the use and enjoyment by it, under license made January 1, 1918, by the Federal Trade Commission, of United States Letters Patent Nos. 680,395, 718,340 and 868,294, then enemy owned. The plaintiffs are the three German corporations, severally owning the three patents at the time the license was made, and the Chemical Foundation, Incorporated, to which, after his seizure of the patents on February 3 and March 22, 1919, the Alien Property Custodian assigned the patents on April 10, 1919. The German plaintiffs expressly limit the relief sought by them to the "royalties' that accrued under the license prior to the date of the assignment of the patents to the Chemical Foundation, hereinafter called accrued royalties, while that plaintiff limits the relief sought by it to the "royalties" that accrued under the license subsequent to the date of its acquisition of the patents under the assignment. The license, granted "for the term of each of the respective

patents, unless sooner terminated," was terminated by mutual consent September 1, 1920.

To these suits the Treasurer of the United States was made a party defendant in obedience to statutory requirement. Sec. 10(f). The reason for this statutory man[fol. 178] date is found in Sec. 10(d) of the act which calls for the payment by the licensee to the Alien Property Custodian of certain sums to be fixed by the license, and the deposit thereof forthwith by that officer "in the Treasury of the United States as a trust fund for the said licensee and for the owner of the said patent, * * * to be paid from the Treasury upon order of the court, as provided in subdivision (f) of this section, or upon the direction of the alien property custodian."

The cases were tried upon stipulated facts under which the corporate defendant does not dispute the right of the Chemical Foundation to recover from it a reasonabe royalty but it asserts that as Sec. 10(c) of the Trading with the Enemy Act, under which the license was granted, provides—"Such license shall be a complete defense to any suit at law or in equity instituted by the enemy or ally of enemy owners of the letters patent, * * * or otherwise, against the licensee for infringement or for damages, royalty, or other money award on account of anything done by the licensee under such license, except as provided in subsection (f) hereof" its liability for its use and enjoyment of the patents is solely that created by the terms of Sec. 10(f) of the Trading with the Enemy Act, that the limitations specified in the statute creating the liability are a part of the right of action itself, that compliance therewith is essential to the successful assertion of the right conferred by the statute and that because of the seizure and sale of the patents by the Alien Property Custodian the German plaintiffs were not at the time the suits were brought in 1922 and have not at any time since been the owners of the patents within the meaning of subsection (f). In support of their claims the German plaintiffs rely mainly upon an amendment made to that subsection by Sec. 19 of [fol. 179] the "Settlement of War Claims Act of 1928" approved March 10, 1928.

Section 10(f) as originally passed provides:

"The owner of any patent * * * under which a license is granted hereunder may, after the end of the war

and until the expiration of one year thereafter, file a bill in equity against the licensee in the district court of the United States for the district in which the said licensee resides, or, if a corporation, in which it has its principal place of business (to which suit the Treasurer of the United States shall be made a party), for recovery from the said licensee for all use and enjoyment of the said patented invention, * * * Provided, however, That whenever suit is brought, as above, notice shall be filed with the alien property custodian within thirty days after date of entry of suit: Provided further, That the licensee may make any and all defenses which would be available were no license granted. The court on due proceedings had may adjudge and decree to the said owner payment of a reasonable royalty. The amount of said judgment and decree, when final, shall be paid on order of the court to the owner of the patent from the fund deposited by the licensee, so far as such deposit will satisfy said judgment and decree; and the said payment shall be in full or partial satisfaction of said judgment and decree, as the facts may appear; and if, after payment of all such judgments and decrees, there shall remain any balance of said deposit, such balance shall be repaid to the licensee on order of the alien property custodian. If no suit is brought within one year after the end of the war, or no notice is filed as above required, then the licensee shall not be liable to make any further deposits, and all funds deposited by him shall be repaid to him on order of the alien property custodian. * * *"

Sec. 19 of the "Settlement of War Claims Act of 1928" reads thus:

[fol. 180] "Subsection (f) of section 10 of the Trading with the Enemy Act, as amended, is amended by adding at the end thereof the following new paragraph:

"'In the case of any such patent, * * *, conveyed, assigned, transferred, or delivered to the Alien Property Custodian or seized by him, any suit brought under this subsection, within the time limited therein, shall be considered as having been brought by the owner within the meaning of this subsection, in so far as such suit relates to royalties for the period prior to the sale by the Alien Property Custodian of such patent, * * * if brought

either by the Alien Property Custodian or by the person who was the owner thereof immediately prior to the date such patent, * * * was seized or otherwise acquired by the Alien Property Custodian.'"

Each of the bills of complaint was filed in 1922—within one year after the end of the war. Notice of each suit was filed with the Alien Property Custodian within thirty days after the entry of suit.

The sole primary issue, as I understand it, is whether the German plaintiffs have established that they are the respective "owners" of the several patents within the meaning of Sec. 10 (f) either as originally passed or as amended.

That the German plaintiffs were the respective owners of the several patents at the time the license was granted and that they continued to be the owners thereof until the seizure of the patents by the Alien Property Custodian is not disputed. That the seizure of the patents by the Alien Property Custodian divested the enemy owners of their property in and to the patents and vested the Alien Property Custodian therewith as fully and completely as if the seizure had been a valid assignment by the enemy owners is now settled. United States v. Chemical Foundation, [fol. 181] 272 U. S. 1. Commercial Trust Co. v. Miller, 262 U. S. 51, 56. Hicks v. Anchor Packing Co., 16 Fed. (2d) 723 (C. C. A. 3). Hunyadi Janos Corporation v. Stoeger, 5 Fed. (2d) 506, 508. Yet, as an assignment of a patent without more does not transfer to the assignee the right to recover damages or profits for prior infringements, Moore v. Marsh, 7 Wall, 515, 522, United States v. Loughrey, 172 U. S. 206, 211-212, Canda Bros. v. Michigan Malleable Iron Co., 152 Fed. 178, 180, although royalties to accrue and damages and profits for future infringements are incident to and accompany the patent unless separated by express reservation, Canda Bros. v. Michigan Malleable Iron Co., supra, May v. Saginaw Co., 32 Fed. 629, 632, and as a patentee may after assigning the patents sue and recover for past infringements, Moore v. Marsh, 7 Wall. 515, it would seem obvious that an assignor of a patent would have like rights with respect to royalties accrued at the time of the assignment. But the right to recover accrued royalties or damages and profits for past infringements

may likewise be assigned. Merriman v. Smith, 11 Fed. 588, 589, Consolidated Oil Well Packer Co. v. Eaton, Etc., Co., 12 Fed. 865, 870, Adams v. Bellaire Stamping Co. 25 Fed. 270, Walker on Patents Sec. 395. The question thus arises whether at the time of the seizure of the patents or at any other time the Alien Property Custodian was empowered to and did seize the "royalties" accrued under the license of these enemy owned patents for, if there has been no seizure of the accrued royalties the owners of the patents at the time the royalties became due are, with respect to such royalties, the "owners" of the patents within the meaning of Sec. 10 (f) notwithstanding their title to the patents was divested by seizure, unless, by limiting to "the owner of the patent" the right to sue Congress intended to create a new rule with respect to royalties and damages accruing under the enemy owned patents prior to assignment [fol. 182] and to provide that such royalties and damages should pass with and as an inseparable incident of the patent assigned. It is unnecessary, however, here to decide whether accrued royalties did or did not pass with the patent as an inseparable incident for the accrued royalties as well as the patents were expressly seized by the Alien Property Custodian.

That the Alien Property Custodian was empowered by Congress to seize accrued royalties, as well as patents, is made manifest by Sec. 7 (c) of the Trading with the Enemy Act as amended November 4, 1918, 40 Stat. 1020, which says:

"If the President shall so require any money or other property including (but not thereby limiting the generality of the above) patents, * * * choses in action, and rights and claims of every character and description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this act."

All conditions precedent having been complied with the Alien Property Custodian, in the exercise of the power so conferred, on February 3, 1919 did in fact seize patent No. 718,340 not only, but, as well, "every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof." On March 22, 1919 the Alien Property Custodian likewise seized the two remaining patents "and every right, title and interest with respect thereto, including all damages [fol. 183] and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof, subject to the rights of E. I. du Pont de Nemours & Co., Wilmington, Delaware." The express recognition in two of the instruments of seizure of the outstanding license had, of course, no more effect upon the right to royalties accrued and to accrue than a sale of land subject to an outstanding lease has upon the right to rent accrued and to accrue. United States v. Loughrey, 172 U. S. 206, 211-212, 16 R. C. L. 915.

That the comprehensive language of the instruments of seizure embraced accrued royalties cannot, I think, in view of the purpose and scope of the amendment of November 4, 1918, be open to doubt. The so called "royalties" here sought to be recovered are in truth but the statutory, 10 (f), damages fixed in terms of royalty for defendant's infringement of the patents. The German plaintiffs were the owners of the patents at the time the license was granted to the defendant by the Federal Trade Commission. A true license can be granted only by one who owns or has an interest in the property affected by the license. Ruffin v. Seaboard Air Line R. Co., 151 N. C. 330, 66 S. E. 317. Williams v. Concord Cong. Church, 193 Pa. 120, 44 Atl. 272. Bohn v. Hatch, 133 N. Y. 64, 30 N. E. 659. That which in legal contemplation Congress in the exercise of its war powers really did under sections 10 (c) and 10 (f) of the Trading with the Enemy Act was, I think, not to provide for the granting of true licenses but to change in favor of one infringing under the supervision of the Federal Trade Commission the measure of damages ordinarily prevailing in infringement suits and to grant to one so infringing immunity from suit until after the end of the war.

The Alien Property Custodian having been empowered to seize the German plaintiffs' right to accrued royalties and having exercised that right the Alien Property Cus-
[fol. 184] todian became the owner thereof. Hicks v. Anchor Packing Co., 16 Fed. (2d) 723 (C. C. A. 3). Thereafter on April 10, 1919, the Alien Property Custodian, acting under authority of the Trading with the Enemy Act as amended and of the order of Frank L. Polk of February 26, 1919, to whom the President had delegated his authority in the premises, authorizing the Alien Property Custodian to sell at private sale to the Chemical Foundation, Inc., "all the letters patent * * *, including all profits and demands recoverable at law or in equity for the past infringement thereof, which the Alien Property Custodian may have seized or might seize * * *," sold and assigned to the Chemical Foundation, Inc. the whole right, title and interest acquired by him, the Alien Property Custodian, under the instruments of seizure including the right to the choses in action for "all claims and demands for profits and damages recoverable at law or in equity for the past infringement of said letters patent." Later, on February 13, 1920, the President, by executive order, reciting that doubt had arisen with respect to the authority of the Alien Property Custodian to sell and convey to the Chemical Foundation, Inc. "certain of the said choses in action, rights, interests, benefits under agreements, and rights and claims, including rights to receive moneys by way of royalties or otherwise, as compensation for the use of patents, trade-marks or trade names" authorized the Alien Property Custodian to ratify and confirm the sales made to the Chemical Foundation, Inc. by the execution and delivery of a suitable instrument of ratification. Acting in accordance with this order the Alien Property Custodian on March 1, 1921 executed an assignment to the Chemical Foundation, Inc. confirming and ratifying the sale and assignment and selling and assigning to the Chemical Foundation, Inc. "all choses in action, rights, interests, and benefits under agreements and rights and claims of
[fol. 185] every character and description growing out of and appurtenant to the ownership of said property, including (but not thereby limiting the generality of the foregoing) rights to receive moneys by way of royalties or

otherwise as compensation for the use of the patents * * * and all right, title, and interest in and to the choses in action and the funds referred to in section 10, subsection (f) of the 'Trading with the Enemy Act,' as amended, acquired by the Alien Property Custodian by virtue of the seizures by which there were seized patents, * * * under which a license had theretofore been granted in accordance with the provisions of section 10, subsection (c) of said act, as amended, * * *. the intent and purpose of this instrument being to vest in said the Chemical Foundation (Inc.), every right, title, interest, claim, and demand, save such as are specifically excepted in and by the said assignments, acquired by the Alien Property Custodian by virtue of the seizures whereby the said property was seized." These orders and assignments were sustained in United States v. Chemical Foundation, 272 U. S. 1. By virtue of the statute, these orders and assignments the Chemical Foundation became the owner of the choses in action, or right to recover from the defendant the accrued royalties, originally belonging to the German plaintiffs. It is true that the Chemical Foundation has elected not to exercise its right to recover the accrued royalties from the defendant. But such election does not operate as an assignment of that right either to the German plaintiffs or to the Alien Property Custodian. Consequently, the German plaintiffs are without cause of action and without right to recover from the defendant the accrued royalties unless by the amendment of March 10, 1928 to sec. 10 (f) of the Trading with the Enemy Act Congress divested the Chemical Foundation of its right and revested the Germans therewith. That right is a chose in action. A chose in action is property. The fifth amendment to the Consti- [fol. 186] tution of the United States, providing that no person shall be deprived of his property without due process of law, denies to the Congress power to transfer property from one to another directly or indirectly. Ochoa v. Hernandez, 230 U. S. 139, Gilman v. Tucker, 128 N. Y. 190, 28 N. E. 1040. In the former of these cases the Supreme Court, holding that even if the commanding officer in territory occupied by military forces of the United States has all the legislative power as to such territory possessed by Congress, he is still subject, as Congress is, to the pro-

visions of the fifth amendment and cannot by military orders deprive persons of their property without due process of law, said, p. 161:

"Whatever else may be uncertain about the definition of the term 'due process of law,' all authorities agree that it inhibits the taking of one man's property and giving it to another, contrary to settled usages and modes of procedure, and without notice or an opportunity for a hearing."

The German plaintiffs, correctly asserting that the war powers of Congress are not limited or affected by the restrictions of the fifth and sixth amendments, Miller v. United States, 11 Wall. 268, 304-305, take the position that the amendment of 1928 to section 10 (f) of the Trading with the Enemy Act was an exercise by Congress of its constitutional power to "make rules concerning captures on land and water." Constitution, Article I, Sec. 8. The Treaty of Peace with Germany was signed in Berlin, August 25, 1921. The President's Proclamation on November 14, 1921, declared the war "terminated on July 2, 1921." If, however, the Treaty of Peace did not constitute a bar to subsequent action by Congress concerning captures on land and water and the amendment of 1928 was in truth an exercise of its war powers that fact constitutes a denial that the amendment was intended to operate upon or [fol. 187] with respect to the choses in action here involved, for that property having been on April 10, 1919 sold and passed into the channels of commerce under the express authority of Congress, Sec. 12 of the Trading with the Enemy Act, as amended March 28, 1918, 40 Stat. 460, United States v. Chemical Foundation, 272 U. S. 1, the war powers of Congress with respect to that property became, thereupon, functus officio. After its sale the Government did not hold it and it no longer bore the stamp "captured property." Captured property sold under authority of Congress to American citizens passed from under the powers of Congress touching captured property as fully and completely as a patented article sold by the patentee passes from under the monopoly of the patent. See

Chaffee v. Boston Belting Company, 22 How. 217, 223. The property to which the Congress reserved the right to make disposition after the war did not include that sold under its authority during the war. The amendment of 1928 is wholly without effect upon United States v. Chemical Foundation, 272 U. S. 1, and Hicks v. Anchor Packing Co., 16 Fed. (2d) 723, (C. C. A. 3). What the effect of that amendment may be in instances in which the seized choses in action have never been disposed of and are still retained by the Alien Property Custodian it is neither necessary nor proper here to decide.

Having no cause of action either at the time their suits were entered or at any time since, the bills of complaint filed by the German plaintiffs must be dismissed.

The Alien Property Custodian, however, asserting that by the seizures he became the owner of the patents and of the right to recover the accrued royalties and that the right to recover the accrued royalties has not been disposed of and is now owned by him, now moves that he be substituted for the German plaintiffs in the three suits brought by them. That the Custodian is correct in his [fol. 188] assumption that the full right and title to the choses in action for the accrued royalties were, through seizure, acquired by him has been hereinbefore shown. His second contention—that he was without power to sell the accrued royalties—rests, as I understand it, upon the four-fold proposition that the accrued royalties consisted of the moneys deposited, after payment by the licensee, by him in the Treasury of the United States pursuant to Sec. 10 (d), that he was without power to sell money, that Congress by providing in Sec. 12 of the Trading with the Enemy Act—"After the end of the war any claim of an enemy or of ally of enemy to any money or other property received and held by the Alien Property Custodian on deposit in the United States Treasury, shall be settled as Congress shall direct," 40 Stat. 411, reserved to itself the right to make disposition of these moneys after the end of the war, and that Congress by the Settlement of War Claims Act of 1928 has exercised this reserved power. I think these propositions cannot be sustained. The bills of complaint were filed, not against the funds in the hands of the Treasurer under Sec. 10 (d), but for the recovery from the defendant of "a reasonable royalty" under Sec.

10 (f) for defendant's use and enoyment of the inventions. The moneys paid by the defendant to the Alien Property Custodian and by him deposited in the Treasury of the United States under Sec. 10 (d) are in no sense royalties or damages for infringement. They are merely a surety fund to which the plaintiff in a decree for the recovery for defendant's use and enoyment of the invention may resort for full or partial satisfaction of the decree, as the facts may appear. There was, of course, no sale to the Chemical Foundation of these moneys by the Alien Property Custodian. That which was sold and assigned by him to the Chemical Foundation consisted of choses in action [fol. 189] against the licensee. As those choses in action were assignable the statute, Sec. 10 (f), conferred, as an incident to the assignment, upon the assignee reducing them to judgment or decree a right to resort to the surety fund for full or partial satisfaction of the decree. Again, the moneys paid by the defendant into the Treasury of the United States having been received by the Treasurer under Section 10 (d) "as a trust fund for the said licensee and for the owner of the said patent," it cannot be assumed that the Congress by its amendment of 1928 to Sec. 10 (f) of the Trading with the Enemy Act intended to violate the terms of the trust under which the moneys were held or to appropriate to the Government's own use funds held by it in trust. Furthermore, Congress did not by Sec. 12 of the Trading with the Enemy Act reserve to itself the right to make disposition of these moneys after the end of the war. On the contrary, by the provisos in the final paragraph of that section it expressly excepted these moneys from that reserved power.

The Alien Property Custodian, like the German plaintiffs, being without a cause of action at the time the suits were instituted or at any time since, his motion must be denied without regard to whether he would or would not be entitled to be substituted as a party plaintiff had he a cause of action.

The Treasurer of the United States has moved that the bill of complaint filed by the Chemical Foundation be dismissed upon the ground that it sets forth no cause of action. Since, however, that plaintiff became the purchaser and assignee of the patents, with which the right to future royalties and to damages for future infringements passed

as an incident, and as it appears that the defendant used the inventions of the patents after the assignment, this motion must also be denied.

Decrees and orders in conformity herewith may be presented.

(Sgd.) Hugh M. Morris, J.

November 16, 1928.

[fol. 190] In United States District Court

No. 487

[Title omitted]

Order Denying Motion to Dismiss—Filed December 14, 1928

And now, to wit, this fifteenth day of December, A. D. 1928, this cause having by order of October 6, 1927, been consolidated for trial with the causes pending in this Court entitled Farbwerke Vormals Meister, Lucius & Bruning, v. E. I. du Pont de Nemours and Company and Frank White, as Treasurer of the United States No. 492 In Equity; Deutsche Gold and Silber Scheide Anstalt Vormals Roessler v. E. I. du Pont de Nemours and Company and Frank White, as Treasurer of the United States, No. 494 In Equity, and Badische Anilin & Soda Fabrik v. E. I. du Pont de Nemours and Company and Frank White, as Treasurer of the United States, No. 495 In Equity, (the last mentioned cause to the extent of the issues therein relating to Federal Trade Commission License No. 19), and the Motion made in the Answer of Frank White, as Treasurer of the United States, to dismiss the bill of complaint, herein, having come on to be heard at this term, and argued by counsel; thereupon, upon consideration thereof, it is

Ordered by the Court that the said motion be and the same hereby is denied.

(Sgd.) Hugh M. Morris, J.

[fol. 191] IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

No. 487. In Equity

THE CHEMICAL FOUNDATION, INCORPORATED, Plaintiff,

v.

E. I. DU PONT DE NEMOURS AND COMPANY (a Corporation), and FRANK WHITE, as Treasurer of the United States, Defendants

DECREE—Filed December 15, 1928

And now, to wit, this fifteenth day of December, A. D. 1928, this cause having by order of October 6, 1927, been consolidated for trial with the causes pending in this Court entitled Farbwerke Vormals Meister Lucius & Bruning v. E. I. du Pont de Nemours and Company and Frank White, as Treasurer of the United States, No. 492 in Equity, Deutsche Gold & Silber Scheide Anstalt vormals Roessler v. E. I. du Pont de Nemours and Company and Frank White, as Treasurer of the United States, No. 494 In Equity, and Badische Anilin & Soda Fabrik v. E. I. du Pont de Nemours and Company and Frank White, as Treasurer of the United States, No. 495 In Equity (the last mentioned cause to the extent of the issues therein relating to Federal Trade Commission License No. 19), and having come on to be heard at this term, and argued by counsel; thereupon, upon consideration thereof, it is

Ordered, adjudged and decreed by the Court, as follows:

First. That the plaintiff became on April 10, 1919 and has ever since been and is now the sole owner of the Letters [fol. 192] Patent of the United States Nos. 680395, 868294 and 718340 and of the inventions and discoveries covered thereby and of every right, title and interest therein, including in particular the right inuring to the "owner" of said Letters Patent, under and by virtue of Section 10-f as originally enacted of the Act of Congress known as the Trading with the Enemy Act, to sue and recover for the use and enjoyment of the inventions and discoveries covered by said Letters Patent by any person or persons licensed

under other provisions of said Act to use and enjoy the same.

Second. That the right of recovery so belonging to the plaintiff embraces the right to recovery for all use and enjoyment of the inventions and discoveries covered by said Letters Patent by every and all such person or persons so licensed, without regard to whether or not such use and enjoyment was wholly or in part before or after said April 10, 1919, and is unaffected by the amendment of said Section 10-f of said Act by Section 19 of the Act of Congress known as the Settlement of War Claims Act of 1928, or by any other amendment of said Trading with the Enemy Act.

Third. That the plaintiff is entitled to recover from the defendant E. I. du Pont de Nemours and Company a reasonable royalty for all use and enjoyment by said defendant of the inventions and discoveries covered by said Letters Patent under Federal Trade Commission License No. 19 dated January 21, 1918 and under said License as amended by order of said Commission dated January 14, 1920; and

Fourth. That the plaintiff having in its bill of complaint limited its claim to such recovery to all such use and enjoyment for the period from on and after April 10, 1919, do recover from the defendant E. I. du Pont de Nemours and Company a reasonable reasonable royalty for all use [fol. 193] and enjoyment of the inventions and discoveries covered by said Letters Patent by said defendant E. I. du Pont de Nemours and Company pursuant to said License and to said License as amended for the period from on and after April 10, 1919, with interest thereon, the account to be taken and stated and such reasonable royalty ascertained by proceedings appropriate for such purpose; and

Fifth. That upon the taking and stating of said account and the ascertainment of said reasonable royalty and after consideration thereof by this Court the plaintiff shall have a final decree herein against the defendant E. I. du Pont de Nemours and Company for the amount of such reasonable royalty for the use and enjoyment of the inventions and discoveries covered by said Letters Patent by said E. I. du Pont de Nemours and Company for the period from on and after April 10, 1919 as this Court shall thereby

determine, with interest thereon, and costs to be taxed by the Clerk, and that said final decree shall further provide that the defendant the Treasurer of the United States forthwith pay over to the plaintiff the fund deposited with him by the Alien Property Custodian representing payments by the defendant E. I. du Pont de Nemours and Company, pursuant to the terms of said License and of said License as amended, for and on account of its use and enjoyment under said License and said License as amended of the inventions and discoveries covered by said Letters Patent, together with all income from said fund and increment thereof to the extent that said fund and the income and increment thereof do not exceed the amount of the said reasonable royalty, interest and costs theretofore by said final decree directed to be paid to the plaintiff by said defendant E. I. du Pont de Nemours and Company for its said use and enjoyment of the inventions and discoveries covered by said Letters Patent for the period from on and [fol. 194] after April 10, 1919, such payment when received by the plaintiff to be applied by it as a payment by said defendant E. I. du Pont de Nemours and Company on account of the amount so directed to be paid by said defendant to the plaintiff by said final decree.

(Sgd.) Hugh M. Morris, J.

IN UNITED STATES DISTRICT COURT

No. 492

[Title omitted]

ORDER DENYING MOTION FOR SUBSTITUTION—Filed December 15, 1928

And now, to-wit, this fifteenth day of December, A. D. 1928, this cause having by order of October 6, 1927, been consolidated for trial with the causes pending in this Court entitled The Chemical Foundation, Incorporated, v. E. I. du Pont de Nemours and Company and Frank White, as Treasurer of the United States, No. 487 in Equity, Deutsche Gold & Silber Scheide Anstalt Vormals Roessler v. E. I.

du Pont de Nemours and Company and Frank White, as Treasurer of the United States, No. 487 In Equity, Deutsche Badische Anilin & Soda Fabrik v. E. I. du Pont de Nemours and Company and Frank White, as Treasurer of the United [fol. 195] States, No. 495 In Equity (the last mentioned cause to the extent of the issues therein relating to Federal Trade Commission License No. 19), and the motion filed herein by Howard Sutherland, as Alien Property Custodian of the United States, to be substituted as plaintiff in this cause for and instead of the plaintiff Farbwerke Vormals Meister, Lucius & Bruning, having come on to be heard, and argued by counsel, thereupon, upon consideration thereof, it is

Ordered by the Court that the said motion be and the same is hereby denied.

(Sgd.) Hugh M. Morris, J.

In United States District Court for the District of Delawake

No. 492. In Equity

Farbwerke Vormals Meister, Lucius & Bruning, Plaintiff,

v.

E. I. du Pont de Nemours and Company (a Corporation) and Frank White, as Treasurer of the United States, Defendants

Decree Dismissing Bill—Filed December 15, 1928

And now, to-wit, this 15th day of December, A. D. 1928, this cause having by order of October 6, 1927, been consolidated for trial with the causes pending in this Court entitled The Chemical Foundation, Incorporated, v. E. I. du Pont de Nemours and Company, and Frank White, as Treasurer of the United States, No. 487 in Equity, [fol. 196] Deutsche Gold & Silber Schneide Anstalt Vormals Roessler v. E. I. du Pont de Nemours and Company and Frank White, as Treasurer of the United States, No. 494 In Equity, and Badische Anilin & Soda Fabrik v. E. I. du

Pont de Nemours and Company and Frank White, as Treasurer of the United States, No. 495 In Equity (the last mentioned cause to the extent of the issues therein relating to Federal Trade Commission License No. 19), and the defendant, Frank White, as Treasurer of the United States having in open court abandoned his motion made in his answer to dismiss the bill of complaint, and the plaintiff having in open court limited its claims as set forth in the bill to recovery from the defendant, E. I. du Pont de Nemours and Company of a reasonable royalty for all use and enjoyment to said defendant of the patented inventions referred to in the bill under the license therein mentioned to the period prior to April 10, 1919, and waived its claim to any recovery from said defendant for any such use and enjoyment subsequent to that date, and the cause having come on to be heard at this term, and argued by counsel; thereupon, upon consideration thereof, it is

Ordered, adjudged and decreed by the Court, that the motion to dismiss made in the answer of the defendant, E. I. du Pont de Nemours and Company be and hereby is granted, and that the bill of complaint filed herein be and it hereby is dismissed with costs to be taxed by the clerk.

(Sgd.) Hugh M. Morris, J.

[fol. 197] IN UNITED STATES DISTRICT COURT

No. 494

[Title omitted]

ORDER DENYING MOTION FOR SUBSTITUTION—Filed December 15, 1928.

And now, to-wit, this 15th day of December, A. D. 1928, this cause having by order of October 6, 1927, been consolidated for trial with the causes pending in this Court entitled The Chemical Foundation, Incorporated, v. E. I. du Pont de Nemours and Company, and Frank White, as Treasurer of the United States, No. 487 In Equity, Farbwerke Vormals Meister, Lucius & Bruning v. E. I. du Pont de Nemours and Company and Frank White, as Treasurer of the United States, No. 492 In Equity, and Badische

Anilin & Soda Fabrik v. E. I. du Pont de Nemours and Company and Frank White, as Treasurer of the United States, No. 495 In Equity (the last mentioned cause to the extent of the issues therein relating to Federal Trade Commission License No. 19), and the motion filed herein by Howard Sutherland, as Alien Property Custodian of the United States, to be substituted as plaintiff in this cause for and instead of the plaintiff Deutsche Gold & Silber Scheide [fol. 198] Anstalt Vormals Roessler, having come on to be heard, and argued by counsel, thereupon, upon consideration thereof it is

Ordered by the Court that said motion be and the same hereby is denied.

(Sgd.) Hugh M. Morris, J.

In United States District Court for the District of Delaware

No. 494. In Equity

Deutsche Gold & Silber Scheid Anstalt Vormals Roessler, Plaintiff,

v.

E. I. du Pont de Nemours and Company (a Corporation) and Frank White, as Treasurer of the United States, Defendants

Decree Dismissing Bill—Filed December 15, 1928

And now, to-wit, this 15th day of December, A. D. 1928, this cause having by order of October 6, 1927, been consolidated for trial with the causes pending in this Court entitled The Chemical Foundation, Incorporated, v. E. I. du Pont de Nemours and Company, and Frank White, as Treasurer of the United States, No. 487 In Equity, Farbwerke Vormals Meister, Lucius & Bruning v. E. I. du Pont de Nemours and Company and Frank White, as Treasurer of the United States, No. 492 In Equity, and Badische Anilin & Soda Fabrik v. E. I. du Pont de Nemours and Company and Frank White, as Treasurer of the United

States, No. 495 In Equity (the last mentioned cause to the [fol. 199] extent of the issues therein relating to Federal Trade Commission License No. 19), and the defendant, Frank White, as Treasurer of the United States having in open court abandoned his motion made in his answer to dismiss the bill of complaint, and the plaintiff having in open court limited its claim as set forth in the bill to a recovery from the defendant, E. I. du Pont de Nemours and Company of a reasonable royalty for all use and enjoyment by said defendant of the patented inventions referred to in the bill under the license therein mentioned to the period prior to April 10, 1919, and waived its claim to any recovery from said defendant for any such use and enjoyment subsequent to that date, and the cause having come on to be heard at this term, and argued by counsel; thereupon, upon consideration thereof, it is

Ordered, adjudged and decreed by the Court, that the motion to dismiss made in the answer of the defendant, E. I. du Pont de Nemours and Company, be and hereby is granted, and that the bill of complaint filed herein be and it hereby is dismissed with costs to be taxed by the clerk.

(Sgd.) Hugh M. Morris, J.

[fol. 200] IN UNITED STATES DISTRICT COURT

No. 495

[Title omitted]

ORDER DENYING MOTION FOR SUBSTITUTION—Filed December 15, 1928

And now, to-wit, this fifteenth day of December, A. D. 1928, this cause to the extent of the issues herein relating to Federal Trade Commission License No. 19, having by order of October 6, 1927, been consolidated for trial with the causes pending in this court entitled The Chemical Foundation, Incorporated, v. E. I. du Pont de Nemours and Company, and Frank White, as Treasurer of the United States, No. 487 In Equity, Farbwerke Vormals, Meister, Lucius & Bruning v. E. I. du Pont de Nemours and Com-

pany and Frank White, as Treasurer of the United States, No. 492 In Equity, and Deutsche Gold & Silber Scheide Anstalt Vormals Roessler v. E. I. du Pont de Nemours and Company and Frank White, as Treasurer of the United States, No. 494 In Equity, and the motion filed herein by Howard Sutherland, as Alien Property Custodian of the United States, to be substituted as plaintiff in this cause for and instead of the plaintiff Badische Anilin & Soda [fol. 201] Fabrik, having come on to be heard, and argued by counsel, thereupon, upon consideration thereof, it is

Ordered by the Court that said motion be and the same hereby is denied.

(Sgd.) Hugh M. Morris, J.

In United States District Court for the District of Delaware

No. 495. In Equity

Badische Anilin & Soda Fabrik, Plaintiff,

v.

E. I. du Pont de Nemours and Company (a Corporation) and Frank White, as Treasurer of the United States, Defendants

Decree Dismissing Bill—Filed December 15, 1928

And now, to wit, this fifteenth day of December, A. D. 1928, this cause to the extent of the issues herein relating to Federal Trade Commission License No. 19, having by order of October 6, 1927, been consolidated for trial with the causes pending in this Court entitled The Chemical Foundation, Incorporated, v. E. I. du Pont de Nemours and Company, and Frank White, as Treasurer of the United States, No. 487 In Equity, Farbwerke Vormals Meister, Lucius & Bruning v. E. I. du Pont de Nemours and Company, and Frank White, as Treasurer of the United States, No. 492 In Equity, and Deutsche Gold & Silber Scheide Anstalt Vormals Roessler v. E. I. du Pont de Nemours and [fol. 202] Company, and Frank White, as Treasurer of the

United States, No. 494 In Equity, and the defendant, Frank White, as Treasurer of the United States having in open court abandoned his motion made in his answer to dismiss the bill of complaint, and the plaintiff having in open court limited its claim as set forth in the bill to a recovery from the defendant, E. I. du Pont de Nemours and Company, of a reasonable royalty for all use and enjoyment by said defendant of the patented inventions referred to in the bill under the license therein mentioned to the period prior to April 10, 1919, and waived its claim to any recovery from said defendant for any such use and enjoyment subsequent to that date, and the cause having come on to be heard at this term, and argued by counsel; thereupon, upon consideration thereof, it is

Ordered, Adjudged and Decreed by the Court, that the motion to dismiss made in the answer of the defendant, E. I. du Pont de Nemours and Company, be and hereby is granted, and that the bill of complaint filed herein be and it hereby is dismissed with costs to be taxed by the Clerk

(Sgd.) Hugh M. Morris, J.

[fol. 203] In United States District Court

No. 487

[Title omitted]

Petition for Appeal—Filed March 13, 1929

Deutsche Gold & Silber Scheide Anstalt Vormals Roessler, Badische Anilin & Soda Fabrik and Farbwerke Vormals Meister, Lucius & Bruning, plaintiffs in three suits respectively numbered 494, 495 and 492 In Equity, which, by order of this Court dated October 6, 1927, were consolidated with the above entitled suit, numbered 487 In Equity, conceiving themselves aggrieved by the interlocutory decree made and entered herein by this Honorable Court, do hereby appeal from said decree to the United States Circuit Court of Appeals for the Third Circuit for the reasons specified in the assignment of errors which is filed herewith, and pray that this appeal may be allowed and that a

transcript of the record, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Third Circuit. Said plaintiffs further pray the Court that, since the entire evidence in this cause was stipulated in the form of a narrative statement, the parties hereto be relieved of any further requirement of reducing the evidence herein to narrative form and that said stipulation as to the [fol. 204] facts be taken as and for a narrative statement of the evidence herein, to be inserted and included in the transcript of the record to be forwarded to said United States Circuit Court of Appeals for the Third Circuit, and that this Court enter an order to that effect.

Deutsche Gold & Silber Scheide Anstalt Vormals Roessler, Badische Anilin & Soda Fabrik, and Farbwerke Vormals Meister, Lucius & Bruning.
(Sgd.) Chas. F. Curley, Wilmington, Delaware;
O'Gorman, Battle, Vandiver & Levy, No. 37 Wall Street, New York, N. Y.; Cravath, de Gersdorff, Swaine & Wood, 15 Broad Street, New York, N. Y.,
Their Solicitors.

Dated Wilmington, Delaware, March 13, 1929.

[fol. 205] IN UNITED STATES DISTRICT COURT

No. 487

[Title omitted]

ORDER ALLOWING APPEAL—Filed March 13, 1929

Deutsche Gold & Silber Scheide Anstalt Vormals Roessler, Badische Anilin & Soda Fabrik and Farbwerke Vormals Meister, Lucius & Bruning, plaintiffs in three suits respectively numbered 494, 495 and 492 In Equity, which by order of this Court dated October 6, 1927, were consolidated with the above-entitled suit, having this day filed their petition for appeal to the United States Circuit Court of Appeals for the Third Circuit and their assignment of errors, and having further prayed that the stipulation as to the facts heretofore filed herein be taken as and for the

narrative statement of evidence herein and that they be relived of any further requirement of reducing the evidence herein to narrative form, it is, this thirteenth day of March, 1929,

Adjudged, ordered and decreed that the claim of appeal from the interlocutory decree made herein on the fifteenth day of December, 1928, of Deutsche Gold and Silber Scheide Anstalt Vormals Roessler, Badische Anilin & Soda Fabrik [fol. 206] and Farbwerke Vormals Meister, Lucius & Bruning, plaintiffs in three suits respectively numbered 494, 495 and 492 In Equity, which by order of this Court dated October 6, 1927, were consolidated with the above-entitled suit, be, and the same hereby is allowed, and that the stipulation as to the facts heretofore filed herein be taken as and for the condensed narrative statement of the evidence herein, and that said plaintiffs be, and they hereby are, relieved of any further requirement of reducing the evidence to narrative form, and that said stipulation as to the facts shall be included and inserted in the transcript of the record to be forwarded to the United States Circuit Court of Appeals for the Third Circuit in lieu of any further narrative statement of the evidence herein; and it is

Further ordered that an undertaking for costs shall be given by the appellants jointly in the sum of $250.

(Sgd.) Hugh M. Morris, Judge of the United States District Court for the District of Delaware.

[fol. 207] In United States District Court

No. 487

[Title omitted]

Assignment of Errors.—Filed March 13, 1929

Now come Deutsche Gold & Silber Scheide Anstalt Vormals Roessler, Badische Anilin & Soda Fabrik and Farbwerke Vormals Meister, Lucius & Bruning, plaintiffs in three suits respectively numbered 494, 495 and 492 In Equity, which, by order of this Court dated October 6, 1927, were consolidated with the above-entitled suit and file

the following assignment of errors upon which they will rely upon their prosecution of their appeal in the above-entitled suit from the interlocutory decree made by this Honorable Court on the fifteenth day of December, 1928, ordering, adjudging and decreeing among other things, that the plaintiff above named, The Chemical Foundation, Incorporated, do recover from the defendant above named, E. I. du Pont de Nemours and Company, a reasonable royalty for all use and enjoyment of the inventions and discoveries covered by certain letters patent pursuant to a certain license and ordering, adjudging and decreeing that an account be taken and stated and such reasonable royalty ascertained by proceedings appropriate for such purpose, [fol. 208] and assign error in the following matters, to wit:

First. The Court erred in ordering, adjudging and decreeing in paragraph first of said interlocutory decree that the plaintiff, The Chemical Foundation, Incorporated, became on April 10, 1919, and has ever since been and now is the sole owner of the Letters Patent of the United States Nos. 680,395, 868,294 and 718,340 and of the inventions and discoveries covered thereby and of every right, title and interest therein, including in particular the right inuring to the "owner" of said letters patent, under and by virtue of Section 10-f as originally enacted of the Act of Congress known as the Trading with the Enemy Act, to sue and recover for the use and enjoyment of the inventions and discoveries covered by said letters patent by any person or persons licensed under other provisions of said Act to use and enjoy the same.

Second. The Court erred in ordering, adjudging and decreeing in paragraph second of said interlocutory decree that the right of recovery so held to belong to said plaintiff, The Chemical Foundation, Incorporated, embraces the right to recover for all use and enjoyment of the inventions and discoveries covered by said letters patent by every and all such person or persons so licensed, without regard to whether or not such use and enjoyment was wholly or in part before or after said April 10, 1919, and is unaffected by the amendment of said Section 10-f of said Act by Section 19 of the Act of Congress known as the Settlement of War Claims Act of 1928, or by any other amendment of said section of said Trading with the Enemy Act.

[fol. 209] Third. The Court erred in ordering, adjudging and decreeing in paragraph third of said interlocutory decree that said plaintiff, The Chemical Foundation, Incorporated, is entitled to recover from the defendant E. I. du Pont de Nemours and Company a reasonable royalty for all use and enjoyment by said defendant of the inventions and discoveries by said letters patent under Federal Trade Commission License No. 19, dated January 21, 1918 and under said license as amended by order of said Commission dated January 14, 1920.

Fourth. The Court erred in ordering, adjudging and decreeing in paragraph fourth of said interlocutory decree that said plaintiff, The Chemical Foundation, Incorporated, having in its bill of complaint limited its claim to such recovery to all such use and enjoyment for the period from on and after April 10, 1919, do recover from the defendant E. I. du Pont de Nemours and Company a reasonable royalty for all use and enjoyment of the inventions and discoveries covered by said letters patent by said defendant E. I. du Pont de Nemours and Company pursuant to said license and to said license as amended for the period from on and after April 10, 1919, with interest thereon, the account to be taken and stated and such reasonable royalty ascertained by proceedings appropriate for such purpose.

Fifth. The Court erred in ordering, adjudging and decreeing in paragraph fifth of said interlocutory decree that upon the taking and stating of said account and the ascertainment of said reasonable royalty, and after consideration thereof by this Court, the plaintiff shall have a final decree herein against the defendant E. I. du Pont de Nemours and Company for the amount of such reasonable royalty for the use and enjoyment of the inventions and [fol. 210] discoveries covered by said letters patent by said E. I. du Pont de Nemours and Company for the period from on and after April 10, 1919, as this Court shall thereby determine, with interest thereon, costs to be taxed by the Clerk, and that said final decree shall further provide that the defendant the Treasurer of the United States forthwith pay over to the plaintiff the fund deposited with him by the Alien Property Custodian representing payments by the defendant E. I. du Pont de Nemours and Company,

pursuant to the terms of said license and of said license and of said license as amended, for and on account of its use and enjoyment under said license and said license as amended of the inventions and discoveries covered by said letters patent, together with all income from said fund and increment thereof, to the extent that said fund and the income and increment thereof do not exceed the amount of the said reasonable royalty, interest and costs theretofore by said final decree directed to be paid to the plaintiff by said defendant E. I. du Pont de Nemours and Company for its said use and enjoyment of the inventions and discoveries covered by said letters patent for the period from on and after April 10, 1919, such payment when received by the plaintiff to be applied by it as a payment by said defendant E. I. du Pont de Nemours and Company on account of the amount so directed to be paid by said defendant to the plaintiff by said final decree.

Sixth. The Court erred in holding that Badische Anilin & Soda Fabrik was not, and in not holding that it was, the owner of the letters patent of the United States No. 718,340 within the meaning of Section 10 (f) of the Trading with the Enemy Act.

Seventh. The Court erred in holding that Badische Anilin & Soda Fabrik was not, and in not holding that it was, the [fol. 211] owner of United States Letters Patent No. 718,340 within the meaning of Section 10 (f) of the Trading with the Enemy Act as amended by Section 19 of the Act of Congress known as Settlement of War Claims Act of 1928 approved March 10, 1928.

Eighth. The Court erred in holding that Farbwerke Vormals Meister, Lucius & Bruning was not and in not holding that it was, the owner of the Letters Patent of the United States No. 868,294 within the meaning of Section 10(f) of the Trading with the Enemy Act.

Ninth. The Court erred in holding that Farbwerke Vormals Meister, Lucius & Bruning was not, and in not holding that it was, the owner of United States Letters Patent No. 868,294 within the meaning of Section 10 (f) of the Trading with the Enemy Act as amended by Section 19 of the Act of Congress known as Settlement of War Claims Act of 1928 approved March 10, 1928.

Tenth. The Court erred in holding that Deutsche Gold & Silber Scheide Anstalt Vormals Roessler was not, and in not holding that it was, the owner of the letters patent of the United States No. 680,395 within the meaning of Section 10 (f) of the Trading with the Enemy Act.

Eleventh. The Court erred in holding that Deutsche Gold & Silber Scheide Anstalt Vormals Roessler was not, and in not holding that it was, the owner of United States Letters Patent No. 680,395, within the meaning of Section 10 (f) of the Trading with the Enemy Act as amended by Section 19 of the Act of Congress known as Settlement of War Claims Act of 1928 approved March 10, 1928.

Twelfth. The Court erred in holding that the seizure of the Letters Patent of the United States Nos. 680,395, [fol. 212] 868,294, and 718,340, embraced the right to accrued royalties from the time the license to the defendant E. I. du Pont de Nemours and Company was granted by the Federal Trade Commission.

Thirteenth. The Court erred in holding that the Alien Property Custodian having been empowered to seize and under such power having seized the rights to accrued royalties became the owner of the rights to accrued royalties and by virtue of the various assignments vested in the plaintiff, The Chemical Foundation, Incorporated, the complete ownership of the right to receive from the defendant E. I. du Pont de Nemours and Company the accrued royalties originally belonging to the several enemy owners of said several United States letters patent.

Fourteenth. The Court erred in holding that the express limitation of the relief sought by the plaintiff, The Chemical Foundation, Incorporated, to the royalties that accrued under the license subsequent to the assignment of said several letters patent by the Alien Property Custodian to it on April 10, 1919, does not entitle said several enemy owners of said several letters patent to recover said royalties accruing prior to April 10, 1919.

Fifteenth. The Court erred in holding that the amendment approved on March 10, 1928, to Section 10 (f) of the Trading with the Enemy Act was unconstitutional by virtue

of the provisions of the Fifth Amendment to the Constitution of the United States.

Sixteenth. The Court erred in holding that by virtue of the provisions of the Fifth Amendment to the Constitution of the United States the amendment approved March 10, 1928, to Section 10 (f) of the Trading with the Enemy Act was unconstitutional since it is undisputed that said [fol. 213] amendment approved March 10, 1928, did not deprive the defendant E. I. du Pont de Nemours and Company of any property and no question as to the unconstitutionality of said amendment was raised or involved as between Deutsche Gold & Silber Scheide Anstalt Vormals Roessler, Badische Anilin & Soda Fabrik and Farbwerke Vormals Meister, Lucius & Bruning and the plaintiff, The Chemical Foundation, Incorporated.

Seventeenth. The Court erred in holding that Section 19 of the Act of Congress known as Settlement of War Claims Act of 1928, amending Section 10 (f) of the Trading with the Enemy Act did not confirm in the plaintiffs Deutsche Gold & Silber Scheide Anstalt Vormals Roessler, Badische Anilin & Soda Fabrik, and Farbwerke Vormals Meister, Lucius & Bruning the right to recover, severally and respectively, from the defendant E. I. du Pont de Nemours and Company for all use and enjoyment of the inventions and discoveries covered respectively by said several letters patent prior to April 10, 1919.

Eighteenth. The Court erred in holding that plaintiffs Deutsche Gold & Silber Scheide Anstalt Vormals Roessler, Badische Anilin & Soda Fabrik and Farbwerke Vormals Meister, Lucius & Bruning were not respectively entitled to recover from the defendant E. I. du Pont de Nemours and Company a reasonable royalty for all use and enjoyment prior to April 10, 1919, by said defendant of the inventions and discoveries covered respectively by said several letters patent under Federal Trade Commission License No. 19 dated January 21, 1918, and under said license as amended by order of said Commission dated January 14, 1920.

Nineteenth. The Court erred in holding that the war powers of Congress with respect to royalties under said [fol. 214] several patents accrued prior to April 10, 1919,

were functus officio at the time of the passage of Section 19 of the Settlement of War Claims Act of 1928, approved March 10, 1928.

Wherefore said plaintiffs Deutsche Gold and Silber Scheide Anstalt Vormals Roessler, Badische Anilin & Soda Fabrik and Farbwerke Vormals Meister, Lucius & Bruning pray that said interlocutory decree in the above-entitled cause may be reversed and set aside and that said plaintiffs may be granted appropriate relief in the premises in accordance with the prayers of their respective bills of complaint herein.

Deutsche Gold & Silber Scheide Anstalt Vormals Roessler, Badsiche Anilin & Soda Fabrik, Farbwerke Vormals Meister, Lucius & Bruning, by (Sgd.) Chas F. Curley, Wilmington, Delaware; O'Gorman, Battle, Vandiver & Levy, 37 Wall Street, New York City; Cravath, de Gersdorff, Swaine & Wood, 15 Broad Street, New York City, Their Solicitors.

[fols. 215 & 216] Citation, in usual form, showing service on Wm. G. Mahaffy et al., filed March 19, 1929, omitted in printing.

[fol. 217] In United States District Court

No. 492

[Title omitted]

Petition for Appeal—Filed March 8, 1929

The above-named plaintiff conceiving itself aggrieved by the decree made and entered herein on the fifteenth day of December, A. D. 1928, in the above-entitled cause, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Third Circuit for the reasons specified in the assignment of errors which is filed herewith and it prays that this appeal may be allowed and that a

transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Third Circuit. Said plaintiff further prays the court that since the entire evidence in this cause was stipulated in the form of a narrative statement that the parties hereto be relieved of any further requirement of reducing the evidence herein to narrative form and that said stipulation as to the facts be taken as and for a narrative statement of the evidence herein and that this Court enter an order to that effect, to be inserted and included in the transcript of the record to be [fol. 218] forwarded to said United States Circuit Court of Appeals for the Third Circuit.

Farbwerke Vormals Meister, Lucius & Bruning, by
(Sgd.) Chas. F. Curley, Solicitor.

Dated Wilmington, Delaware, March 8, 1929.

[Note.—A similar petition for appeal filed in causes Nos. 494 and 495, and not reprinted here.]

In United States District Court

No. 492

[Title omitted]

Order Allowing Appeal—Filed March 8, 1929

The plaintiff herein having this day filed its petition for appeal to the United States Circuit Court of Appeals for the Third Circuit and its assignment of errors, and it having further prayed that the stipulation as to the facts heretofore filed herein be taken as and for the narrative statement [fol. 219] of the evidence herein and that the plaintiff be relieved of any further requirement of reducing the evidence herein to narrative form, it is this eighth day of March, 1929,

Adjudged, ordered and decreed that plaintiff's claim of appeal be and the same hereby is allowed and that the stipulation as to the facts heretofore filed herein may be taken as

and for the condensed narrative statement of the evidence herein, and that the plaintiff be and it hereby is relieved of any further requirement of reducing the evidence to narrative form, and that said stipulation as to the facts shall be included and inserted in the transcript of the record to be forwarded to the said United States Circuit Court of Appeals for the Third Circuit in lieu of any further narrative statement of the evidence herein. Bond to be given by the appellant in the sum of two hundred and fifty dollars.

(Sgd.) Hugh M. Morris, Judge of the United States District Court for the District of Delaware.

[NOTE.—A similar order allowing appeal entered in causes Nos. 494 and 495, and not reprinted here.]

[fol. 220] IN UNITED STATES DISTRICT COURT

No. 492

[Title omitted]

ASSIGNMENT OF ERRORS—Filed March 8, 1929

Now comes Farbwerke Vormals Meister, Lucius & Bruning, the plaintiff in the above-entitled suit and files the following assignment of errors upon which it will reply upon its prosecution of the appeal in the above-entitled suit from the decree made by this Honorable Court on the fifteenth day of December, 1928, granting the motion to dismiss made in the answer of the defendant E. I. du Pont de Nemours and Company, and dismissing the bill of complaint of the plaintiff filed herein, and assigns error in the following matters, to wit:

First. The Court erred in holding that the plaintiff herein, Farbwerke Vormals Meister, Lucius & Bruning, was not and in not holding that it was the owner of the several letters patent mentioned in the bill of complaint herein within the meaning of Section 10 (f) of the Trading with the Enemy Act.

[fol. 221] Second. The Court erred in holding that the plaintiff herein, Farbwerke Vormals Meister, Lucius & Bruning, was not and in not holding that it was the owner of the several letters patent mentioned in the bill of complaint herein within the meaning of Section 10 (f) of the Trading with the Enemy Act as amended by Section 19 of the Act of Congress known as Settlement of War Claims Act of 1928, approved March 10, 1928.

Third. The Court erred in granting the motion to dismiss the bill of complaint of the plaintiff Farbwerke Vormals Meister, Lucius & Bruning made in the motion to dismiss and answer of the defendant E. I. du Pont de Nemours and Company, and erred in dismissing the bill of complaint herein of plaintiff Farbwerke Vormals Meister, Lucius & Bruning and in denying to said plaintiff the relief prayed for in the prayer of said bill of complaint.

Fourth. The Court erred in holding that the seizure by the Alien Property Custodian of the letters patent mentioned in the bill of complaint of the plaintiff Farbwerke Vormals Meisters, Lucius & Bruning embraced the right to accrued royalties from the time the license mentioned in the bill of complaint to the defendant E. I. du Pont de Nemours and Company was granted.

Fifth. The Court erred in holding that the Alien Property Custodian having been empowered to seize, and under such power having seized, the rights of plaintiff Farbwerke Vormals Meister, Lucius & Bruning to accrued royalties became the owner of the rights to accrued royalties and by virtue of the various assignments vested in the plaintiff [fol. 222] The Chemical Foundation, Incorporated, the complete ownership of the right to receive from the defendant E. I. du Pont de Nemours and Company the accrued royalties originally belonging to the plaintiff Farbwerke Vormals Meister, Lucius & Bruning.

Sixth. The Court erred in holding that the express limitation of the relief sought by the plaintiff The Chemical Foundation, Incorporated, to the royalties that accrued under the license subsequent to the assignment of the letters patent by the Alien Property Custodian to it on April 10, 1919, does not entitle the plaintiff Farbwerke Vormals

Meister, Lucius & Bruning to recover said royalties accruing prior to April 10, 1919.

Seventh. The Court erred in holding that the amendment, approved on March 10, 1928, to Section 10 (f) of the Trading with the Enemy Act was unconstitutional by virtue of the provisions of the Fifth Amendment to the Constitution of the Uinted States.

Eighth. The Court erred in holding that by virtue of the provisions of the Fifth Amendment to the Constitution of the United States the amendment, approved March 10, 1928, to Section 10(f) of the Trading with the Enemy Act was unconstitutional since it is undisputed that said amendment, approved March 10, 1928, did not deprive the defendant E. I. du Pont de Nemours and Company of any property and no question of the unconstitutionality of said amendment was raised or involved as between the plaintiff Farbwerke Vormals Meister, Lucius & Bruning and the plaintiff The Chemical Foundation, Incorporated.

Ninth. The Court erred in holding that plaintiff The Chemical Foundation, Incorporated, on April 10, 1919, [fol. 223] became, has ever since been and now is the sole owner of the letters patent of the United States Nos. 680,395, 868,294 and 718,340 and of every right, title and interest therein, including in particular the right inuring to the "owner" of said letters patent under and by virtue of Section 10 (f) as originally enacted of the Act of Congress known as the Trading with the Enemy Act, to sue and recover for the use and enjoyment of the inventions and discoveries covered by said letters patent by any person or persons licensed under other provisions of said act to use and enjoy the same.

Tenth. The Court erred in holding that Section 19 of the Act of Congress known as the Settlement of War Claims Act of 1928 amending Section 10 (f) of the Trading with the Enemy Act did not confirm in the plaintiff Farbwerke Vormals Meister, Lucius & Bruning the rights to recover from the defendant E. I. du Pont de Nemours and Company for all use and enjoyment of the inventions and discoveries covered by said letters patent prior to April 10, 1919.

Eleventh. The Court erred in holding that the plaintiff Farbwerke Vormals Meister, Lucius & Bruning is not en-

titled to recover from the defendant E. I. du Pont de Nemours and Company, a reasonable royalty for all use and enjoyment prior to April 10, 1919, by said defendant of the inventions and discoveries covered by said letters patent under Federal Trade Commission License No. 19, dated January 21, 1918, and under said license as amended by order of said Commission dated January 14, 1920.

Twelfth. The Court erred in holding that the plaintiff Farbwerke Vormals Meister, Lucius & Bruning was not [fol. 224] entitled to an accounting and a final decree herein against the defendant E. I. du Pont de Nemours and Company, for the amount of a reasonable royalty for the use and enjoyment of the inventions and discoveries covered by said letters patent by said E. I. du Pont de Nemours and Company for the period prior to April 10, 1919.

Thirteenth. The Court erred in holding that the plaintiff Farbwerke Vormals Meister, Lucius & Bruning was not entitled to a final decree directing that the defendant Frank White, as Treasurer of the United States, forthwith pay over to said plaintiff the fund deposited with him by the Alien Property Custodian representing payments by the defendant E. I. du Pont de Nemours and Company pursuant to the terms of said license and of said license as amended, for and on account of its use and enjoyment under said license and said license as amended of the inventions and discoveries covered by said letters patent together with all income from said fund and increment thereof, to the extent that said fund and the income and increment thereof do not exceed the amount of the said reasonable royalty, interest and cost theretofore by said final decree directed to be paid to the plaintiff by said defendant for its said use and enjoyment of the inventions and discoveries covered by said letters patent for the period prior to April 10, 1919, such payment when received by the plaintiff to be applied by it as a payment by said defendant on account of the amount so directed to be paid by said defendant to the plaintiff by said final decree.

Fourteenth. The Court erred in holding that the war powers of Congress with respect to royalties under said patents accrued prior to April 10, 1919, were functus officio [fol. 225] at the time of the passage of Section 19 of the

Settlement of War Claims Act of 1928, approved March 10, 1928.

Wherefore the plaintiff, Farbwerke Vormals Meister, Lucius & Bruning, prays that the decree in this cause dismissing its bill of complaint herein may be reversed and that plaintiff may be granted appropriate relief in the premises in accordance with the prayer of its bill of complaint herein.

Farbwerke Vormals Meister, Lucius & Bruning, by (Sgd.) Chas. F. Curley, Wilmington, Delaware; Cravath, de Gersdorff, Swaine & Wood, No. 15 Broad Street, New York City, Solicitors for Plaintiff.

[Note.—Similar assignments of error filed in Causes Nos. 494 and 495, and not reprinted here.]

[fols. 226 & 227] Citation, in usual form, showing service on J. P. Laffey et al., filed March 19, 1929, omitted in printing.

[fol. 228] In United States District Court

No. 487

[Title omitted]

Petition for Appeal—Filed March 12, 1929

Walter O. Woods, one of the above-named defendants, conceiving himself aggrieved by the decrees made and entered on the fifteenth day of December, 1928, in the above-entitled cause, does hereby appeal from said orders and decrees to the United States Circuit Court of Appeals for the Third Circuit for the reasons specified in the assignment of errors which is filed herewith, and he prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said decrees were made,

duly authenticated, may be sent to the United States Circuit Court of Appeals for the Third Circuit.

(Sgd.) Leonard E. Wales, United States Attorney for the District of Delaware; (Sgd.) Thomas E. Rhodes, Special Assistant to the Attorney General, Attorneys for the Defendant Walter O. Woods, as Treasurer of the United States.

[fol. 229] In United States District Court

No. 487

[Title omitted]

Order Allowing Appeal—Filed March 12, 1929

The defendant, Walter O. Woods, as Treasurer of the United States, having this day filed in open court his petition for appeal to the United States Circuit Court of Appeals for the Third Circuit from the decree entered in the above-entitled case on the fifteenth day of December, 1928, denying the motion to dismiss the plaintiff's bill of complaint filed by the Treasurer of the United States, and from the decree entered on the same date in favor of the plaintiff, and having also filed his assignment of errors, it is this the twelfth day of March, 1929,

Adjudged, ordered and decreed that said defendant's appeal be and the same is hereby allowed.

(Sgd.) Hugh M. Morris, United States District Judge for the District of Delaware.

[fol. 230] In United States District Court

No. 487

[Title omitted]

Assignment of Errors—Filed March 12, 1929

Now comes the defendant, Walter O. Woods, as Treasurer of the United States, and files the following assignment of

errors upon which he will rely in the prosecution of his appeal from the decrees made and entered herein on the fifteenth day of December, 1928, denying his motion to dismiss the bill of complaint, and in granting the relief prayed for by the plaintiff, the Chemical Foundation, Incorporated:

1. The Court erred in denying the motion to dismiss the bill of complaint filed by the defendant, the Treasurer of the United States.

2. The Court erred in granting the relief prayed for by the plaintiff, the Chemical Foundation, Incorporated.

3. The Court erred in holding that the plaintiff, the Chemical Foundation, Incorporated, as assignee of the [fol. 231] Alien Property Custodian of the patents described in the bill of complaint was entitled to receive the royalty which had accrued prior to April 10, 1919, under the license of said patents by the Federal Trade Commission to the E. I. du Pont de Nemours & Company described in said bill of complaint.

4. The Court erred in holding that the Chemical Foundation, Incorporated as assignee of the Alien Property Custodian of the patents described in the bill of complaint, was entitled to receive the royalty which accrued under the license thereof by the Federal Trade Commission to the E. I. du Pont de Nemours & Company from April 10, 1919, to the date of the cancellation of such license.

5. The Court erred in refusing to hold that the royalty paid in under the licenses referred to in the bill of complaint was the property of the United States which the Alien Property Custodian had no authority to assign to the Chemical Foundation, Incorporated.

6. The Court erred in holding that the Alien Property Custodian assigned to the plaintiff any royalty, or the right to receive royalty, due under the licenses of the Federal Trade Commission on the patents described in the bill of complaint.

7. The Court erred in holding that the amendment to Section 10. (f) of the Trading with the Enemy Act, approved March 10, 1928, known as the "Settlement of War

Claims Act of 1928," was unconstitutional by virtue of the Fifth Amendment to the Constitution of the United States.

8. The Court erred in holding that by virtue of the provisions of the Fifth Amendment to the Constitution of the [fol. 232] United States the amendment, approved March 10, 1928, to Section 10 (f) of the Trading with the Enemy Act was unconstitutional since it is undisputed that said amendment, approved March 10, 1928, did not deprive the defendant, the E. I. du Pont de Nemours & Company, of any property.

9. The Court erred in holding that the plaintiff, the Chemical Foundation, Incorporated, was entitled by virtue of Section 10 (f) of the Trading with the Enemy Act to sue and recover for the use and enjoyment of the patents described in the bill of complaint by the E. I. du Pont de Nemours & Company under the license of the Federal Trade Commission.

Wherefore the defendant prays that the aforesaid decrees be reversed, set aside and vacated and that he be granted such relief in the premises to which he may be justly and equitably entitled.

(Sgd.) Leonard E. Wales, United States Attorney for the District of Delaware; (Sgd.) Thomas E. Rhodes, Special Assistant to the Attorney General, Attorneys for the Defendant Walter O. Woods, as Treasurer of the United States.

[fols. 233 & 234] Citation, in usual form, showing service on J. P. Caffey et al., filed March 19, 1929, omitted in printing.

[fol. 235] IN UNITED STATES DISTRICT COURT

No. 492

[Title omitted]

PETITION FOR APPEAL—Filed March 12, 1929

The petitioner, Howard Sutherland, as Alien Property Custodian, conceiving himself aggrieved by the decree

made and entered in the above-entitled cause on the fifteenth day of December, 1928, denying his motion for substitution as plaintiff for and instead of the Farbwerke vormals Meister, Lucius & Bruning, does hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Third Circuit for the reasons specified in the assignment of errors which is filed herewith, and he prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Third Circuit.

(Sgd.) Leonard E. Wales, United States Attorney for the District of Delaware; (Sgd.) Thomas E. Rhodes, Special Assistant to the Attorney General, Attorneys for the Petitioner.

[fol. 236] IN UNITED STATES DISTRICT COURT

No. 492

[Title omitted]

ORDER ALLOWING APPEAL—Filed March 12, 1929

The petitioner, Howard Sutherland, as Alien Property Custodian, having this day filed in open court his petition for appeal to the United States Circuit Court of Appeals for the Third Circuit from the decree entered in the above-entitled case on the fifteenth day of December, 1928, denying his motion for substitution as plaintiff for and instead of the Farbwerke vormals Meister, Lucius & Bruning, and having also filed his assignment of errors, it is this twelfth day of March, 1929,

Adjudged, Ordered and decreed that said petitioner's appeal be and the same hereby is allowed.

(Sg.) Hugh M. Morris, U. S. District Judge for the District of Delaware.

[fol. 237] IN UNITED STATES DISTRICT COURT

No. 492

[Title omitted]

ASSIGNMENT OF ERRORS—Filed March 12, 1929

Now comes the petitioner, Howard Sutherland, as Alien Property Custodian of the United States, and files the following assignment of errors upon which he will rely in the prosecution of his appeal from the decree made and entered herein on the fifteenth day of December, 1928, denying his motion for substitution as plaintiff in said case for and instead of the Farbwerke Vormals Meister, Lucius & Bruning:

1. The Court erred in denying the motion of the petitioner for substitution as plaintiff for and instead of the above-named plaintiff.

2. The Court erred in holding that the petitioner was not entitled by virtue of Section 10 (f) of the Trading with the Enemy Act, as amended by Section 19 of the Settlement of War Claims Act of 1928, approved March 10, 1928, to be substituted as plaintiff for and instead of the above-named plaintiff and to recover from the defendants a reasonable royalty for the use and enjoyment of the patent described in the bill of complaint by the E. I. du Pont de Nemours & [fol. 238] Company under a license from the Federal Trade Commission.

3. The Court erred in dismissing the plaintiff's bill of complaint.

4. The Court erred in holding that the Chemical Foundation, Incorporated, as assignee of the Alien Property Custodian of the patent described in the bill of complaint was entitled to receive the royalty which had accrued prior to April 10, 1919, under the license of said patent by the Federal Trade Commission to the E. I. du Pont de Nemours & Company described in said bill of complaint.

5. The Court erred in holding that the Chemical Foundation, Incorporated, as assignee of the Alien Property Custodian of the patent described in the bill of complaint, was entitled to receive the royalty which accrued under the license thereof by the Federal Trade Commission to the

E. I. du Pont de Nemours & Company from April 10, 1919, to the date of the cancellation of such license.

6. The Court erred in refusing to hold that the royalty paid in under the license referred to in the bill of complaint was the property of the United States which the Alien Property Custodian had no authority to assign to the Chemical Foundation, Incorporated.

7. The Court erred in holding that the Alien Property Custodian assigned to the Chemical Foundation, Incorporated, any royalty, or the right to receive royalty, due under the licenses of the Federal Trade Commission on the patent described in the bill of complaint.

8. The Court erred in holding that the amendment to Section 1 (f) of the Trading with the Enemy Act, approved March 1, 1928, known as the "Settlement of War Claims [fol. 239] Act of 1928," was unconstitutional by virtue of the Fifth Amendment to the Constitution of the United States.

9. The Court erred in holding that by virtue of the provisions of the Fifth Amendment to the Constitution of the United States the amendment to Section 10 (f) of the Trading with the Enemy Act, approved March 10, 1928, was unconstitutional since it is undisputed that said amendment, approved March 10, 1928, did not deprive the defendant, the E. I. du Pont de Nemours & Company, of any property.

10. The Court erred in holding that the Chemical Foundation, Incorporated, was entitled by virtue of Section 10 (f) of the Trading with the Enemy Act to sue and recover for the use and enjoyment of the patent described in the bill of complaint by the E. I. du Pont de Nemours & Company under the license of the Federal Trade Commission.

Wherefore the petitioner prays that the aforesaid decree be reversed, set aside and vacated and that he be granted such relief in the premises to which he may be justly and equitably entitled.

(Sgd.) Leonard E. Wales, United States Attorney for the District of Delaware; (Sgd.) Thomas E. Rhodes, Special Assistant to the Attorney General; Attorneys for the Petitioner, Howard Sutherland, as Alien Property Custodian.

[NOTE.—A similar petition for appeal, order allowing appeal and assignments of error filed in causes Nos. 494 and 495 and not reprinted here.]

[fols. 240 & 241] Citation, in usual form, showing service on J. P. Caffey, et al., filed March 19, 1929, omitted in printing.

[fol. 242] IN UNITED STATES DISTRICT COURT

No. 487, No. 492, No. 494, No. 495

[Titles omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD—Filed May 2, 1929

[fol. 243] No. 495

And now, to wit, this thirtieth day of March, A. D. 1929, it is stipulated and agreed by and between counsel for the respective parties, with respect to the transcript of record on the appeals taken in each of the four above-entitled causes in Equity, Nos. 487, 492, 494 and 495, by Farbwerke vormals Meister, Lucius & Bruning, Deutsche Gold & Silber Scheide Anstalt vorm. Rossler, and Badische Anilin- & Soda-Fabrik, plaintiffs in causes Nos. 492, 494 and 495, by Walter O. Woods, as Treasurer of the United States, defendant in cause No. 487, and by Howard Sutherland, as Alien Property Custodian, in causes Nos. 492, 494 and 495, as follows:

1. That the four causes having been considered and tried together, a single consolidated transcript of record on the appeals may be used in the United States Circuit Court of Appeals for the Third Circuit and, with the approval of the Court, that the said causes may be heard together in the said United States Circuit Court of Appeals.

2. That the clerk in making up said consolidated transcript of record shall include therein the following:

(1) The docket entries in each cause.
(2) The bill of complain in each cause.

[fol. 244] (3) Answer of E. I. du Pont de Nemours & Company in cause No. 487.

(4) Consent and order of consolidation filed October 6, 1927.

(5) Motion to dismiss and answer of Frank White, as Treasurer of the United States, filed November 9, 1927, in cause No. 487.

(6) Answer of Frank White, as Treasurer of the United States, filed November 9, 1927, in cause No. 492.

(7) Motion to dismiss and answer of E. I. du Pont de Nemours & Company, filed January 16, 1928, in cause No. 492.

(8) Motion for substitution of Howard Sutherland as Alien Property Custodian, filed April 28, 1928, in cause No. 492.

(9) Answer of Frank White, as Treasurer of the United States, filed November 9, 1927, in cause No. 494.

(10) Motion to dismiss and answer of E. I. du Pont de Nemours & Company, filed January 16, 1928, in cause No. 494.

(11) Motion for substitution of Howard Sutherland as Alien Property Custodian, filed April 28, 1928, in cause No. 494.

(12) Answer of Frank White, as Treasurer of the United States, filed November 9, 1927, in cause No. 495.

(13) Motion to dismiss and answer of E. I. du Pont de Nemours & Company, filed January 16, 1928, in cause No. 495.

[fol. 245] (14) Motion for substitution of Howard Sutherland as Alien Property Custodian, filed April 28, 1928, in cause No. 495.

(15) Stipulation captioned in cause No. 487 and filed April 13, 1928, with exhibits annexed.

(16) Stipulation captioned in all four causes, and filed April 30, 1928, with exhibits annexed.

(17) Opinion of the Court filed November 16, 1928.

(18) Order denying motion of Frank White, as Treasurer of the United States, to dismiss bill filed December 15, 1928, in cause No. 487.

(19) Decree entered December 15, 1928, in cause No. 487.

(20) Order denying motion of Alien Property Custodian

to be substituted as plaintiff, filed December 15, 1928, in cause No. 492.

(21) Final decree dismissing bill of complaint filed December 15, 1928, in cause No. 492.

(22) Order denying motion of Alien Property Custodian to be substituted as plaintiff, filed December 15, 1928, in cause No. 494.

(23) Final decree dismissing bill of complaint filed December 15, 1928, in cause No. 494.

(24) Order denying motion of Alien Property Custodian to be substituted as plaintiff, filed December 15, 1928, in cause No. 495.

(25) Final decree dismissing bill of complaint filed December 15, 1928, in cause No. 495.

(26) Petition of Farbwerke vormals Meister Lucius & Bruning, Deutsche Gold & Silber Scheide Anstalt vorm. Roessler, and Badische Anilin- & Soda-Fabrik for appeal, [fol. 246] order allowing appeal and assignments of error, filed March 13, 1929, in cause No. 487.

(27) Citation on appeals of Farbwerke vormals Meister Lucius & Bruning, Deutsche Gold & Silber Scheide Anstalt vorm. Roessler, and Badische Anilin- & Soda-Fabrik, in cause No. 487.

(28) Petition for appeal of Farbwerke vormals Meister Lucius & Bruning, plaintiff, assignment of error and order allowing appeal in cause No. 492, with notation that a similar petition for appeal, order allowing appeal and assignment of errors were filed and allowed in causes Nos. 494 and 495.

(29) Citation on appeal of Farbwerke vormals Meister Lucius & Bruning in cause No. 492, with notation that a similar citation was issued on appeals of plaintiff in causes Nos. 494 and 495.

(30) Petition for appeal of Walter O. Woods, as Treasurer of the United States, order allowing appeal and assignment of errors filed March 12, 1929, in cause No. 487.

(31) Citation on appeal of Walter O. Woods, as Treasurer of the United States in cause No. 487.

(32) Petition for appeal of Howard Sutherland as Alien Property Custodian, order allowing appeal and assignments of error, filed March 12, 1929, in cause No. 492, with

notation that a similar petition for appeal, order allowing appeal and assignments of error were filed and allowed in causes Nos. 494 and 495.

[fol. 247] (33) Citation on appeal of Howard Sutherland as Alien Property Custodian in cause No. 492, with notation that a similar citation was issued on appeal by Howard Sutherland as Alien Property Custodian in causes Nos. 494 and 495.

(34) This stipulation.

(Sgd.) Leonard E. Wales, United States Attorney for the District of Delaware; (Sgd.) Thomas E. Rhoades, Special Assistant to the Attorney-General, Solicitors for Walter O. Woods, as Treasurer of the the United States, and Howard Sutherland, as Alien Property Custodian. (Sgd.) Wm. G. Mahaffy, Solicitor for The Chemical Foundation, Inc. (Sgd.) Chas. F. Curley, Solicitor for Farbwerke vormals Meister Lucius & Bruning, Deutsche Gold & Silber Scheide Anstalt vörm. Roessler, and Badische Anilin- & Soda-Fabrik. (Sgd.) J. P. Laffey, (Sgd.) Wm. S. Gregg, of Counsel for E. I. du Pont de Nemours & Company.

[fol. 248] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 249] Minute entry of argument and submission November 4, 1929, omitted in printing.

[fol. 250] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 4094, October Term, 1929

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING et al., Appellants,

v.

CHEMICAL FOUNDATION, INC., et al., Appellees

No. 4095, October Term, 1929

W. O. Woods, as Treasurer of United States, Appellant,

v.

Chemical Foundation, Inc., et al., Appellees

No. 4096, October Term, 1929

Farbwerke vormals Meister Lucius & Bruning et al., Appellants,

v.

E. I. du Pont de Nemours & Co. et al., Appellees

No. 4097, October Term, 1929

H. Sutherland, as Alien Property Custodian, Appellant,

v.

Farbwerke vormals Meister Lucius & Bruning et al., Appellees

No. 4098, October Term, 1929

Deutsche Gold & Silber Scheide Anstalt vormals Roessler, Appellants,

v.

E. I. du Pont de Nemours & Co. et al., Appellees

No. 4099, October Term, 1929

H. Sutherland, as Alien Property Custodian, Appellant,

v.

Deutsche Gold & Silber Scheide Anstalt vormals Roessler, Appellees,

[fol. 251] No. 4100, October Term, 1929

Badische Anilin & Soda-Fabrik, Appellant,

v.

E. I. du Pont de Nemours & Co. et al., Appellees

No. 4101, October Term, 1929

H. SUTHERLAND, as Alien Property Custodian, Appellant,

v.

BADISCHE ANILIN & SODA-FABRIK et al., Appellees

On Appeal from the District Court of the United States for the District of Delaware

Before Buffington, Woolley, and Davis, Circuit Judges

OPINION—Filed March 4, 1930

WOOLLEY, Circuit Judge:

The Trading with the Enemy Act (approved October 6, 1917, 40 Stat. Chapter 106), provided by Section 10 that the President be authorized to grant licenses under enemy owned patents to citizens of the United States desiring to practice their inventions when in his opinion such grants would be for the public welfare and tend to the successful prosecution of the war, being authorized within limitations to prescribe the fees, compensation or royalt-es for the privilege. Although by the provision of the Act for the recovery of royalties, to which we shall presently advert and on which these suits are founded, the Congress may at first have had in mind a remedy mainly to enemy owners of patents, particularly in view of the situation at the beginning when the Custodian was "a mere conservator" of seized enemy property without right to sell it except to prevent waste, United States v. Chemical Foundation, Inc., 272 U. S. 1, 10; 71 L. Ed. 131, 141, and when the beneficial interested remained in the enemy owner, yet the Congress by amendments made to the Act from time to time as the war progressed, so enlarged the general scope of the Act that it materially changed its character, Hicks v. Anchor Packing Co., 16 Fed. (2d) 723; United States v. Chemical Foundation, Inc., supra, and at the same time changed, or made certain, the character of the provision in question without changing its wording or, until 1928, without adding any words to it. We shall therefore look upon the provision as it grew through the war and stood in 1922 when these suits were brought. Not knowing what changes in the title

to enemy owned patents on which licenses should be granted might occur during the war, yet realizing that some such patents would retain undisturbed the same status of ownership throughout the war, that other enemy owned patents with outstanding licenses might descend through testacy or intestacy from the original owner, or be sold by him, during the war, and that, perhaps, still others might be seized by the Alien Property Custodian and, as afterward happened, be by him either held or sold during the war, the Congress, looking to the future, provided by Subsection (f) of Section 10 what the owner of such a patent might do after the end of the war and provided broadly enough to meet these and perhaps other situations as follows:

[fol. 252] "The owner of any patent * * * under which a license is granted hereunder may after the end of the war and until the expiration of one year thereafter file a bill in equity against the licensee in the District Court of the United States * * * (to which suit the Treasurer of the United States should be made a party) for recovery from the said licensee for all use and enjoyment of the said patented invention."

Pursuant to this provision, Chemical Foundation, Inc., on June 23, 1922—within one year after the end of the war—filed a bill in equity in the District Court against E. I. Du Pont de Nemours & Company (a corporate licensee) and Frank White, Treasurer of the United States, averring that United States Letters Patent Nos. 680,395, 868,294 and 718,340 had been granted the German inventors therein named; that, in January, 1918, the Federal Trade Commission, acting for the President under authority of the cited section of the Act, granted a license to E. I. du Pont de Nemours & Company under these letters patent requiring it to pay the Alien Property Custodian certain royalties reckoned first on profits derived and later on gross amounts received from the sale of products under the license; that subsequently to granting the license the Custodian (on February 3 and March 22, 1919) seized the patents and every right, title and interest with respect to them, which included the right to royalties under the license; that on April 10, 1919, the Custodian sold to the plaintiff, the

Chemical Foundation, these letters patent and every right, title and interest he had in them, which included the royalties so acquired; that on September 1, 1920, the license was cancelled and surrendered; that, by reason of the aforegoing, the Chemical Foundation became the "owner" of said letters patent and of the royalties accrued to April 10, 1919, the date on which the Custodian sold it the patents with the accompanying license rights, and also the royalties which accrued thereafter; praying (after it had elected not to exercise its right to recover royalties that had accrued prior to the latter date) that an accounting be taken by the court, after fixing a reasonable royalty, to ascertain the amount due it by the defendant licensee after the date last named and also the amounts which the defendant had paid the Alien Property Custodian on account of the license and which he had deposited with the defendant Frank White, as Treasurer of the United States, and, finally, praying for an order upon the Treasurer of the United States to pay it all or so much of the license money so deposited with him as will cover the royalties, and, if insufficient, that it have judgment or decree against the defendant licensee for the residue.

Almost immediately on filing its bill, the Chemical Foundation, plaintiff in the above stated action, became the active or potential defendant, though not the nominal defendant, in sundry other actions and cross proceedings. Three German corporations, severally owning the three patents named in the first suit at the time the license was issued, filed on June 30, 1922 bills in equity in the same District Court against the du Pont Company, the same licensee, and the Treasurer of the United States, relying mainly on Section 10 (f) of the Trading with the Enemy Act as amended by Section 19 of the "Settlement of War Claims Act of 1928," approved March 10, 1928, which provided by a new paragraph to Section 10 (f) that;

"In the case of any such patent * * * conveyed, assigned, transferred, or delivered to the Alien Property Custodian, or seized by him, any suit brought under this sub-section, within the time limit therein, shall be considered as having been brought by the owner within the meaning of this sub-section, in so far as such suit relates to

royalties for the period prior to the sale by the Alien Property Custodian of such patent, if brought either by the [fol. 253] Alien Property Custodian or by the person who was the owner thereof immediately prior to the date such patent * * * was seized or otherwise acquired by the Alien Property Custodian, * * *"

Each German plaintiff claimed in its bill to be such "owner" and averred, mutatis mutandis, substantially the same facts as the Foundation averred in its bill and prayed for substantially the same relief, (limited, however, to royalties that had accrued prior to April 10, 1919, the date the patents were sold by the Custodian to the Foundation), first against the moneys which the defendant licensee had through the Custodian deposited with the Treasurer of the United States and, if insufficient, then a judgment or decree against the defendant licensee for the residue.

In addition to the contesting claims of ownership of the royalties under the license, made by the Chemical Foundation on the one hand and the group of German corporations on the other, the Alien Property Custodian appeared on April 28, 1928—six years after suit—and moved that he be substituted as plaintiff in each of the actions instituted by the German corporations, on the contention that, under Section 10 (f) of the Trading with the Enemy Act as amended, he is the "owner" of the royalties on the theory that he lawfully acquired them through seizure (by a predecessor in office) from the original German owners; that, though his predecessor sold them with the patents to the Foundation, he was without power to sell them; that, in consequence, they are still his; that he alone is entitled to recover them from the defendant licensee; and that his recovery should be for the use and enjoyment of the patented inventions for the entire time that company used them under the license of the Federal Trade Commission.

And, finally, the Treasurer of the United States moved to dismiss all four bills on the ground that they set forth no cause of action. Abandoning his motion to dismiss the bills filed by the three German corporations, he, however, held to his motion to dismiss the bill filed by the Foundation.

The du Pont Company, the defendant licensee, filed an answer in each suit and made a motion to dismiss in each of the three suits of the German corporations.

The cases were consolidated and tried upon stipulated facts. The defendant licensee did not dispute the right of the Foundation to recover from it a reasonable royalty but as to all else availed itself of the defense which Section 10 (c) of the Act afforded such a licensee. Of this we shall speak later.

The learned trial court by several appropriate decrees denied the motion of the Treasurer of the United States to dismiss, denied also the motion of the Alien Property Custodian to be substituted as plaintiff in the suits by the German corporations, held that the German plaintiffs are not "owners" of the accrued royalties and therefore not entitled to recover them, and, finally, that the Chemical Foundation is the owner of the royalties, accrued and accruing, and, having elected not to press its claim for royalties accrued, is entitled to an accounting by the defendant licensee for reasonable compensation or royalties for the use and enjoyment of the inventions under the letters patent for the period after April 10, 1919, which, when so determined, shall be paid the Foundation by the Treasurer of the United States from the fund made up of payments by the defendant licensee, pursuant to the terms of the license, and deposited with him by the Custodian, and, if insufficient, it should have a decree against the defendant for the residue. All parties, except the Chemical Foundation and the du Pont Company appealed.

[fol. 254] Thus it happens there are three claimants to the royalties paid the Treasurer under the license of the patents in question—the group of German corporate plaintiffs, the Alien Property Custodian and the Chemical Foundation. Their claims are in each instance based on ownership of the royalties. Who owned them? The answer to that question decides the case. But before that question can be answered we must determine who owned the patents, under which the license was granted, at the time the four suits were brought and the Custodian endeavored to intervene, for it is only to "The owner of any patent . . . under which a license is granted" that Section 10 (f) of the Trading with the Enemy Act accords the right "to file a

bill in equity against the licensee * * * for recovery (of fees, compensation or royalties) for all use and enjoyment of the said patented inventions."

Were the German plaintiffs owners of the royalties at the time of suit? They were, without question, owners of the patents at the time the Federal Trade Commission issued the license under them to the defendant. They were, however, at that time enemy owners and it was because of that characterization and of the exigencies of war as well, that the use and enjoyment of the patented inventions were taken from them and, in the interest of the public welfare and the successful prosecution of the war, turned over to the defendant through the medium of a license. Though called a "license" for want of a better term, the legal minds in Congress recognized that it was not a true license, for a license in the legal sense can be granted only by the owner of a patent, Ruffin v. Seaboard Air Line R. Co., 151 N. C. 330, 66 S. E. 317; Williams v. Concord Cong. Church, 193 Pa. 120, 44 Atl. 272, and, in consequence, the royalties were not true royalties. The transaction was in essence more nearly a qualified confiscation. So the Congress, though using the word "license," hesitated in using the word "royalties" as the consideration for what was not really a license but used also the words "fee," "damages," "other money." Moreover, instead of leaving an aggrieved owner of a patent to his normal remedy of suit for royalties, the Congress, realizing that the use even of an enemy owned patent without a true license from the owner would subject the user to suit for infringement, shut off the enemy patent owner from such an action and protected the patent user—called "licensee"—by providing that:

"Such license shall be a complete defense to any suit at law or in equity instituted by the enemy or ally of enemy owners of the letters patent * * * against the licensee for infringement or for damages, royalty, or other money awarded on account of anything done by the licensee under such license except as provided in Sub-section (f) hereof." (Section 10, Sub-section (c).

It is on this defense that the defendant licensee relies.

When the Federal Trade Commission thus deprived the German patent owners of the use and enjoyment of their

patented inventions, the Germans still remained owners of the patents in the sense of owning the title thereto. But on February 2 and March 22, 1919, the Alien Property Custodian under authority of the Trading with the Enemy Act, as amended, seized the patents. United States v. Chemical Foundation, Inc., 272 U. S. 1. That was long before these suits. Upon seizure of this enemy property the title of the enemy owners passed out of them. United States v. Chemical Foundation, Inc., supra; Hicks v. Anchor Packing Co., 16 Fed. (2d) 723, and it is not now claimed that title to the patents ever went back into them. But the German plaintiffs do claim that when the ownership of [fol. 255] the patents passed from them by seizure, ownership of the royalties under the license remained in them because the royalties were never seized, or, if seized, ownership is in them for a reason presently to be discussed.

Section 7 (c) as amended (50 U. S. C. A. App., p. 210) authorized the Alien Property Custodian to seize among other things "patents, * * * choses in action, and rights and claims of every character and description owned or belonging to * * * an enemy * * *." Under authority of that provision of the War Act, the Custodian, by formal instrument addressed to proper parties, when he seized the named patents also seized "every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government, for past infringement thereof, subject to the rights of" the defendant licensee.

That the seizure—symbolic in character—completely divested the German owners of their title to the patents is now decided. United States v. Chemical Foundation, Inc., 272 U. S. 1; Commercial Trust Co. v. Miller, 262 U. S. 51, 56; Hicks v. Anchor Packing Co., 16 Fed. (2d) 723. Whether the seizure included the royalties incident to the patents and deprived the German owners of the right later to recover them under Section 10 (f) of the Act as though they had never been seized, depends upon whether the words employed in the act of seizure were broad enough to embrace them. It would seem on their face that the words "every right, title and interest with respect to" the patents would include royalties. Royalties are a very real "interest" in, or in respect to, a patent and the right to recover royalties is a very real "right." And they do in-

clude royalties unless there be substance in the German plaintiffs' contention that under well settled law "An assignment of a patent and of right, title and interest thereto does not (without more) transfer to the assignee the right to recover damages or profits for past infringement, Herman v. Detroit Shipbuilding Co., 295 Fed. 423, 425; Moore v. Marsh, 7 Wall. 515, 522; United States v. Loughrey, 172 U. S. 206, 211, 212; Canda Bros. v. Michigan Malleable Iron Co., 152 Fed. 178, 180, * * * and, a fortiori, it (such a general assignment) would not confer the right to recover past royalties which would remain in the assignor." Accepting this law in the abstract, it is pertinent to note that we are not here concerned with an assignment of a patent or of royalties by the German owners to the Alien Property Custodian. We are concerned with their capture—an act of war. We are not dealing with an assignment of patents where there is a question of what was in the minds of the contracting parties as to royalties and as to what passed and what was retained under the terms of an instrument they had drawn and signed. We are dealing with an act of seizure and have to determine wholly outside the law of assignments whether by the terms of the symbol of seizure the royalties in question were included. Having in mind the purpose of the law and observing that the Custodian manifestly attempted to seize the German patents and everything "in respect" to them and to their ownership, we are of opinion that he accomplished what he attempted by words that embrace the royalties in question, and that, in consequence, the German plaintiffs were owners of neither the patents nor the royalties at the time they instituted their suits—unless the quoted amendment to Section 10 (f) of the Trading with the Enemy Act made by the Settlement of War Claims Act of 1928, (which leaves the remedy for royalties as originally provided to "The owner of any patent" at time of suit, whoever he may be), ruthlessly divested the party who acquired ownership by capture, or the party who later [fol. 256] acquired ownership by purchase from the captor, of his ownership in the royalties and revested it in the original owners.

The right to the accrued royalties, in whomsoever vested, is a chose in action; a chose in action is property; and an act which takes property from one person and gives it to

another without legal procedure to determine their rights and without compensation is a deprivation of property without due process of law and is violative of the Fifth Amendment to the Constitution. Subscribing to the reasoning of the learned trial judge, we hold that the Amendment of 1928, valid and useful perhaps in many situations, did not restore to the German plaintiffs ownership of either the patents or the royalties. It follows they did not own the royalties when they filed their bills—the critical time under the statute supplying the remedy—and that, in consequence, the decrees dismissing their suits must be affirmed.

Was the Alien Property Custodian owner of the royalties, or of the right to recover them, at the time of the Germans' suits in 1922 or in 1928 when he sought to be substituted for the German plaintiffs?

Disposing of the last question first, it appears to us that whatever the meaning or intent of the amendment to Section 10 (f), on which the Custodian relies for his right to recover royalties, whether to restore to the Germans a claim for the use and enjoyment of their patented inventions or otherwise, it, by definite expression, relates only to "royalties for the period prior to the sale by the Alien Property Custodian of such patents" which the Foundation is not now seeking to recover. Moreover, the amendment leaves the main body of Section 10 (f), as first drawn, untouched and therefore leaves it with its limitation that, to recover royalties, the "owner" of the patent must file his bill within one year after the end of the war. The Custodian, if owner, has never filed such a bill. Therefore the statute has run against him. Doubtless realizing this, he asked the trial court that he be substituted for the German plaintiffs who filed their bills within the time the statute prescribed. This, seemingly, was an attempt on the part of the Custodian to get under the fallen bar of the statute of limitations and avail himself of the diligence of the German plaintiffs and, oddly enough, to deprive them of their rights, seasonably asserted, to litigate their claims against the defendant licensee. This, without more, is enough to sustain the trial court's refusal to substitute the Custodian for the German plaintiffs. But as the Custodian's ownership of the patents and royalties, past or present, is a step in the orderly devolution of owner-

ship or title to the patents and royalties in question, we shall, for purposes of discussion, regard the Custodian as properly in court and inquire whether or not he owned the patents and royalties at the date of the Germans' suit.

Whereas the German plaintiffs contend that when the Alien Property Custodian seized the patents in question he did not seize the right to recover from the defendant licensee compensation for their use prior to seizure, the Alien Property Custodian contends that he did seize that right but did not assign it to the Chemical Foundation, and that, in consequence, the right so lawfully seized and the ownership so lawfully acquired continues in himself.

In deciding against the German plaintiffs that on seizure of the patents and royalties the title of the enemy-owners passed out of them, United States v. Chemical Foundation, Inc., supra; Hicks v. Anchor Packing Co., supra, it follows necessarily that the title went somewhere. That it went to the Alien Property Custodian who captured them on behalf of the United States is the necessary implication, and, as to patents, is the express finding of the Supreme [fol. 257] Court when in the Foundation case it sustained the Custodian's sales of the captured patents. United States v. Chemical Foundation, Inc., 272 U. S. 1, 15, 16. Although the Congress may, when it enacted Section 10 (f), have had in mind only the original owners, it is manifest that by the amendments of March 28 and November 4, 1918 authorizing the Custodian to seize and sell enemy owned patents and their incidents, it either recognized or created a new "owner" or class of owners, namely, the Custodian and his vendees, qualified by Section 10 (f) to sue licensees for royalties within one year after the end of the war. Therefore, we find ourselves in full accord with the contention of the Custodian that his title to the patents and his right to recover royalties were complete and valid by virtue of a lawful seizure. If he had held the patents and retained the right to recover royalties, in other words, if he had remained "owner" of them until now, he would, if he had conformed to other requirements of the Act, have an undoubted right, as against the German plaintiffs and the Chemical Foundation, to recover them. But on April 10, 1919 he sold the patents to the Chemical Foundation and by that act clearly ceased to be "The owner" of the patents within the sense of Section 10 (f).

The Foundation says that he sold the incidental royalties also. This the Custodian denies. Just here is the turning point in the issue between the Custodian and the Foundation. On this issue we shall do little more than recite the facts.

On April 10, 1919, the Alien Property Custodian, under the authority of executive orders promulgated February 26 and April 5, 1919, by Frank L. Polk, acting for the President (since determined to be valid orders), assigned to the Chemical Foundation "the whole right, title and interest acquired by the said Alien Property Custodian as aforesaid, (i. e. by seizure) in and to" the patents here in question, "together with all claims, demands for profits and damages recoverable at law or in equity for the past infringement of said letters patent. * * *"

Doubt having arisen as to the authority of the Custodian to sell and convey to the Foundation "certain of the said choses in action * * * and rights and claims, including rights to receive moneys by way of royalties or otherwise, as compensation for the use of patents," the President, by executive order dated February 13, 1920, confirmed the authority of the Custodian in that regard, and further authorized him "to confirm and ratify the said sales by the execution and delivery of a suitable instrument of confirmation."

Therefore, on March 1, 1921, the Custodian executed a new assignment to the Foundation confirming and ratifying the prior sales of the patents here in question and specifically assigning to it "all choses in action, * * * rights and claims of every character and description growing out of and pertinent to the ownership of said property, including * * * rights to receive moneys by way of royalties or otherwise as compensation for the use of patents, * * *;" and reciting that the intent and purpose was "to vest in the said Chemical Foundation, Inc., every right, title, interest, claim and demand, save such as are specifically excepted in and by the said assignments, acquired by the Alien Property Custodian by virtue of the seizures."

Both of these conveyances, original and confirmatory, in so far as they related to patents and whatever rights

were embodied within their terms, were upheld by the Supreme Court in United States v. Chemical Foundation, Inc., 272 U. S. 1, 71 L. Ed. 131. As it has been decided by several courts and finally by the Supreme Court that the seizure and sale of these patents were lawful and as we have held in this case, in accord with the Custodian's contention, that the seizure embraced the right to recover royalties on [fol. 258] the outstanding license, it follows that when the Custodian by one instrument sold and assigned to the Foundation generally the whole of everything he had acquired through seizure and by the other instrument specifically sold the "rights to receive moneys by way of royalties or otherwise as compensation for the use of patents, * * * acquired by (him) by virtue of the seizure," he sold and divested himself of all he had acquired, which, on his own contention, included the right to recover royalties, and, in consequence, he is no longer "owner" of the patents or of their incidental rights—unless, as he finally maintains, he, or rather his predecessor in office, while having power to sell the patents was without power to sell the right to the royalties on the theory that, in its power to seize and dispose of enemy owned property as it should see fit, United States v. Chemical Foundation, Inc., 272 U. S. 1; Brown v. United States, 8 Cranch. 110; Miller v. United States, 11 Wall. 268, the Congress has postponed the disposition of royalties arising under war time licenses, including the royalties in suit.

We find no statute [illegible] by the Congress divested, or seemingly intended to [illegible], a vendee of ownership in property lawfully seized and lawfully conveyed and revest it in the Custodian. The Custodian therefore ceased to own the royalties or the right to recover them when he sold and assigned that right to the Chemical Foundation. As the rights of a plaintiff in an action of this kind are defined and limited by the statute, the trial court committed no error when it refused to substitute the Custodian for the German plaintiffs.

And, finally, was the Chemical Foundation owner of the royalties, or the right to recover them, at the time of its suit?

It filed its bill within the period prescribed by the statute. The same lawful seizure by a predecessor in title, which divested the original owners of their property, enured to the title of the Foundation. The same valid sale that divested the Custodian of title vested title in the Foundation. It was in consequence "owner" of both patents and right to royalties at the time of its suit, and, as it has not, so far as the record shows, since then relinquished or been lawfully deprived of its ownership and right, it alone it entitled to sue for and recover the royalties in question.

We subscribe to the reasoning of the learned trial judge on the main issues and the related issues of these cases and direct that the decrees be in all respects affirmed.

Davis, Circuit Judge, took no part in the consideration and decision of this case.

A true Copy. Teste: —— ——, Clerk of the United States Circuit Court of Appeals for the Third Circuit.

[fol. 259] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1929

No. 4094 (List No. 68)

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING; DEUTSCHE Gold & Silber Scheide Anstalt vorm Roessler; and Badische Anilin & Soda-Fabrik, Appellants,

vs.

CHEMICAL FOUNDATION, INC.; E. I. DU PONT DE NEMOURS & Co., and Walter O. Woods, as Treasurer of the United States, Appellees

Appeal from the District Court of the United States for the District of Delaware

DECREE—Filed Mar. 4, 1930

This cause came on to be heard on the transcript of record from the District Court of the United States for the District of Delaware and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby, affirmed.

Philadelphia, March 4, 1930.

Victor B. Woolley, Circuit Judge.

[File endorsement omitted.]

[fol. 260] In United States Circuit Court of Appeals for the Third Circuit, October Term, 1929.

No. 4095 (List No. 69)

Walter O. Woods, as Treasurer of the United States, Appellant,

vs.

Chemical Foundation, Inc., and E. I. du Pont de Nemours & Co., Appellees

Appeal from the District Court of the United States for the District of Delaware

Decree—Filed Mar. 4, 1930

This cause came on to be heard on the transcript of record from the District Court of the United States for the District of Delaware and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby, affirmed.

Philadelphia, March 4, 1930.

Victor B. Woolley, Circuit Judge.

[File endorsement omitted.]

[fol. 261] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1929

No. 4096 (List No. 70)

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, Appellant,

vs.

E. I. DU PONT DE NEMOURS & Co. and WALTER O. WOODS, as Treasurer of the United States, Appellees

Appeal from the District Court of the United States for the District of Delaware

DECREE—Filed Mar. 4, 1930

This cause came on to be heard on the transcript of record from the District Court of the United States for the District of Delaware and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby, affirmed.

Philadelphia, March 4, 1930.

Victor B. Woolley, Circuit Judge.

[File endorsement omitted.]

[fol. 262] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1929

No. 4097 (List No. 71)

HOWARD SUTHERLAND, as Alien Property Custodian, Appellant,

vs.

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING and E. I. du Pont de Nemours & Co. and Walter O. Woods, as Treasurer of the United States, Appellee-

Appeal from the District Court of the United States for the District of Delaware

DECREE—Filed Mar. 4, 1930

This cause came on to be heard on the transcript of record from the District Court of the United States for the District of Delaware and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby, affirmed.

Philadelphia, March 4, 1930.

Victor B. Woolley, Circuit Judge.

[File endorsement omitted.]

[fol. 263] In United States Circuit Court of Appeals for the Third Circuit, October Term, 1929

No. 4098 (List No. 72)

Deutsche Gold & Silber Scheide Anstalt vormals Roessler, Appellants,

vs.

E. I. du Pont de Nemours & Co. and Walter O. Woods, as Treasurer of the United States, Appellees

Appeal from the District Court of the United States for the District of Delaware

Decree—Filed Mar. 4, 1930

This cause came on to be heard on the transcript of record from the District Court of the United States for the District of Delaware and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby, affirmed.

Philadelphia, March 4, 1930.

Victor B. Woolley, Circuit Judge.

[File endorsement omitted.]

[fol. 264] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1929

No. 4099 (List No. 73)

HOWARD SUTHERLAND, Alien Property Custodian, Appellant,

vs.

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORMALS Roessler and E. I. du Pont de Nemours & Co. and Walter O. Woods, as Treasurer of the United States, Appellees

Appeal from the District Court of the United States for the District of Delaware

DECREE—Filed Mar. 4, 1930

This cause came on to be heard on the transcript of record from the District Court of the United States for the District of Delaware and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby, affirmed.

Philadelphia, March 4, 1930.

Victor B. Woolley, Circuit Judge.

[File endorsement omitted.]

[fol. 265] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1929

No. 4100 (List No. 74)

BADISCHE ANILIN & SODA-FABRIK, Appellant,

vs.

E. I. DU PONT DE NEMOURS & Co. and WALTER O. WOODS, as Treasurer of the United States, Appellees

Appeal from the District Court of the United States for the District of Delaware

DECREE—Filed Mar. 4, 1930

This cause came on to be heard on the transcript of record from the District Court of the United States for the District of Delaware and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby, affirmed.

Philadelphia, March 4, 1930.

Victor B. Woolley, Circuit Judge.

[File endorsement omitted.]

[fol. 266] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1929

No. 4101 (List No. 75)

HOWARD SUTHERLAND, Alien Property Custodian, Appellant,

vs.

BADISCHE ANILIN & SODA-FABRIK and E. I. DU PONT DE Nemours and Co. and Walter O. Woods, as Treasurer of the United States, Appellees

Appeal from the District Court of the United States for the District of Delaware

DECREE—Filed Mar. 4, 1930

This cause came on to be heard on the transcript of record from the District Court of the United States for the District of Delaware and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby, affirmed.

Philadelphia, March 4, 1930.

Victor B. Woolley, Circuit Judge.

[File endorsement omitted.]

[fol. 267] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 268] IN SUPREME COURT OF THE UNITED STATES

Nos. 271, 272, 273, 274

ORDER EXTENDING TIME WITHIN WHICH TO APPLY FOR WRIT OF CERTIORARI—Filed June 5, 1930

On consideration of the motion of the Solicitor General, counsel for the petitioners in the above-entitled causes, and good cause therefor having been shown,

It is now here ordered that the time within which petition for writ of certiorari may be filed herein be, and the same is hereby, extended for a period of 35 days from this date.

Charles E. Hughes, Chief Justice of the United States.

Dated this 4 day of June, 1930.

[fol. 268½] [File endorsement omitted.]

[fol. 269] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 179

ORDER ALLOWING CERTIORARI—Filed October 13, 1930.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 270] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 180

ORDER ALLOWING CERTIORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is

granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 271] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 181

ORDER ALLOWING CERTIORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 272] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 182

ORDER ALLOWING CERTIORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 273] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 271

ORDER ALLOWING CERTIORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is

granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 274] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 272

ORDER ALLOWING CERTIORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 275] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 273

ORDER ALLOWING CERTIORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 276] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 274

ORDER ALLOWING CERTIORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is

granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 35,101, 35,102, 35,103, 35,104. U. S. Circuit Court of Appeals, Third Circuit. Term No. 179. Farbwerke vormals Meister Lucius & Bruning, Deutsche Gold & Silber Scheide Anstalt vorm., etc., et al., petitioners, vs. Chemical Foundation, Inc.; E. I. du Pont de Nemours & Co., etc., et al. Term No. 180. Farbwerke vormals Meister Lucius & Bruning, petitioner, vs. E. I. du Pont de Nemours & Co. and Walter O. Woods, as Treasurer of the United States. Term No. 181. Deutsche Gold & Silber Scheide Anstalt vorm. Roessler, petitioner, vs. E. I. du Pont de Nemours & Co. and Walter O. Woods, as Treasurer of the United States. Term No. 182. Badische-Anilin & Soda-Fabrik, petitioners, vs. E. I. du Pont de Nemours & Co. and Walter O. Woods, as Treasurer of the United States. Petition for writs of certiorari and exhibit thereto. Filed June 4, 1930. File No. 35,101, 35,102, 35,103, 35,104. File No. 35,193, 35,194, 35,195, 35,196. U. S. Circuit Court of Appeals, Third Circuit. Term No. 271. Walter O. Woods, as Treasurer of the United States, petitioner, vs. The Chemical Foundation, Inc., and E. I. du Pont de Nemours & Co. Term No. 272. Howard Sutherland, as Alien Property Custodian, petitioner, vs. Farbwerke Vormals Meister Lucius & Bruning, E. I. du Pont de Nemours & Co., and Walter O. Woods, as Treasurer of the United States. Term No. 273. Howard Sutherland, as Alien Property Custodian, petitioner, vs. Deutsche Gold & Silber Scheide Anstalt Vorm. Roessler, E. I. du Pont de Nemours & Co., and Walter O. Woods, as Treasurer of the United States. Term No. 274. Howard Sutherland, as Alien Property Custodian, petitioner, vs. Badische Anilin & Soda-Fabrik E. I. du Pont de Nemours & Co. and Walter O. Woods, as Treasurer of the United States. Petition for writs of certiorari and exhibit thereto. Filed July 8, 1930. File No. 35,193, 35,194, 35,195, 35,196, 35,101.

FILE COPY

Nos. 179 to 182 inc

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CHARLES ELMORE C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930

No.

FARBWERKE vormals MEISTER LUCIUS & BRUNING, DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm. ROESSLER, and BADISCHE-ANILIN & SODA-FABRIK,

Petitioners,

against

CHEMICAL FOUNDATION, INC.; E. I. duPONT deNEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,

Respondents.

PETITION FOR WRITS OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

AND

BRIEF IN SUPPORT THEREOF

FREDERICK H. WOOD
ALMUTH C. VANDIVER
BRUCE BROMLEY
CHARLES F. CURLEY
Attorneys for Petitioners

[NOTE: For Additional Captions See Inside Front Cover.]

No.

FARBWERKE vormals MEISTER LUCIUS & BRUNING,

Petitioner,

against

E. I. duPONT deNEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,

Respondents.

No.

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm. ROESSLER,

Petitioner,

against

E. I. duPONT deNEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,

Respondents.

No.

BADISCHE-ANILIN & SODA-FABRIK,

Petitioner,

against

E. I. duPONT deNEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,

Respondents.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930

FARBWERKE vormals MEISTER LUCIUS & BRUNING, DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm. ROESSLER, and BADISCHE-ANILIN & SODA-FABRIK,

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CHEMICAL FOUNDATION, INC.; E. I. duPONT deNEMOURS & Co., and WALTER O. WOODS, as Treasurer of the United States,

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Petitioner,

against

E. I. duPONT deNEMOURS & Co., and WALTER O. WOODS, as Treasurer of the United States,

Respondents.

No.

October Term, 1930

PETITION FOR WRITS OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners, Farbwerke vormals Meister Lucius & Bruning, Deutsche Gold & Silber Scheide Anstalt vorm. Roessler and Badische-Anilin & Soda-Fabrik respectfully pray for writs of certiorari to the Circuit Court of Appeals for the Third Circuit to review the decrees of that court entered March 4, 1930, affirming decrees of the United States District Court for the District of Delaware. A certified transcript of the record in the case, including the proceedings in said Circuit Court of Appeals, is furnished herewith in accordance with Rule 38, par. 1, of the Rules of this Court.

STATEMENT.

At the outbreak of the War petitioners, citizens of Germany, (hereinafter collectively referred to as the German owners) were severally the owners of certain United States letters patent (R. 168-169).

Trading with the Enemy Act,* (Oct. 6, 1917, c. 106; 40 Stat. 411), authorized the granting of licenses for the use of enemy-owned United States letters patent (Sec. 10 (c), 50 USCA App. p. 271) and the payment

*The pertinent provisions of this Act are printed in full in the appendix.

of reasonable royalties for such use, to be fixed as provided in the Act and to be recoverable by the owners of such patents upon the filing of bills in equity after the end of the War and until the expiration of one year thereafter (Sec. 10 (f), 50 USCA App. p. 272). The power to grant such licenses was delegated by the President to the Federal Trade Commission (R. 125-127). Pursuant to such authority, respondent E. I. duPont deNemours & Co. (hereinafter referred to as duPont) was licensed under Federal Trade Commission License No. 19 to use said patents (R. 29-34). The patents were subsequently seized by the Alien Property Custodian (R. 98-105) and thereafter sold and assigned to respondent Chemical Foundation, Inc., on April 10, 1919 (R. 106-110). Neither the instruments of seizure (R. 98-105) nor the assignment (R. 106-110) expressly covered the accrued royalties.

Within a year after the termination of the War, the German owners, severally, brought suits against duPont to recover reasonable royalties pursuant to Section 10 (f) of the Trading with the Enemy Act (R. 38-50). Within the same period Chemical Foundation brought suit against duPont for the recovery of reasonable royalties for the use of the same patents from the date of the assignment of the patents by the Alien Property Custodian to it, namely, April 10, 1919, to the date when the license was cancelled (R. 15-38).

By its bill of complaint Chemical Foundation makes no claim for royalties which had accrued prior to the assignment of the patents to it. The German owners, as correctly stated by the court below (R. 254), ex-

pressly limited the relief sought by them to such royalties as had accrued prior to such assignment. The three suits of the German owners and that of the Chemical Foundation, Inc., were consolidated for trial (R. 53-55).

While these cases were pending, the court below (The Circuit Court of Appeals for the Third Circuit) in *Hicks* v. *Anchor Packing Co.*, 16 F. (2d) 723, held that the right conferred, by the act, upon the owner of patents, or copyrights, to bring suits for royalties accruing under licenses granted in accordance therewith was limited to the persons who were the owners of such patents, or copyrights, at the time of the institution of such suits, and that hence enemy owners could not sue thereunder for royalties which had accrued on such patents prior to their seizure and sale. Thereafter by Section 19 of the Settlement of War Claims Act of 1928 (Act of March 10, 1928, ch. 167, Sec. 19; 45 Stat. 2.), Section 10 (f) of Trading with the Enemy Act was amended by the addition of the following paragraph:

> "In the case of any such patent, trade-mark, print, label, or copyright, conveyed, assigned, transferred or delivered to the Alien Property Custodian or seized by him, *any suit brought under this subsection, within the time limited therein, shall be considered as having been brought by the owner within the meaning of this subsection, in so far as such suit relates to royalties for the period prior to the sale by the Alien Property Custodian* of such patent, trade-mark, print, label, or copyright, if brought either by the Alien Property Custodian or by the person who was the owner thereof immediately prior to the date such patent, trade-mark, print, label or copy-

right was seized or otherwise acquired by the Alien Property Custodian."

The District Court following the decision of the Circuit Court of Appeals in *Hicks* v. *Anchor Packing Co., supra,* held that the German owners were not the owners of the patents within the meaning of Section 10 (f) of Trading with the Enemy Act, as originally enacted, that the amendment thereof by Settlement of War Claims Act was unconstitutional, and dismissed the bills of the German owners (R. 195-196, 198-9, 201-202). In the Chemical Foundation suit, consolidated for trial with the suits of German owners, the decree entered by the District Court declared Chemical Foundation to be the owner of the royalties, which had accrued prior to the seizure and sale of said patents, as well as thereafter (R. 191-194), although, in its bill of complaint, it had asserted no such right and although no issue in respect thereof was joined in said case between the German owners and petitioners.

On appeal the Circuit Court of Appeals affirmed holding (1) that the theretofore accrued royalties as well as the patents themselves were seized by the Alien Property Custodian, (2) That the German owners were not the owners of the patents within the meaning of the Act, as originally enacted and (3) that the amendment of 1928, if applied to these cases, was unconstitutional.

REASONS FOR ALLOWANCE OF THE WRITS

1. The patents were seized under subsection (c) of Section 7 of Trading with the Enemy Act, as amended

November 4, 1918 (ch. 201, sec. 1; 40 Stat. 1020; 50 USCA App. p. 210-211). This subsection expressly provides that the instrument of seizure should "have the same force and effect as a duly executed conveyance, transfer, or assignment" to the Alien Property Custodian of the patents seized. The instrument of seizure did not in express terms cover the accrued royalties. It is settled federal law that an assignment of a patent and of all right, title and interest in respect thereof does not include accrued royalties, or the right to recover damages and profits for past infringements, unless expressly conveyed. *Moore* v. *Marsh*, 7 Wall. 515, 522; *United States* v. *Loughrey*, 172 U. S. 206, 211, 212; *Crown Die & Tool Co.* v. *Nye Tool & Machine Works*, 261 U. S. 24; *Superior Drill Co.* v. *Nye Mfg. Co.*, 98 Fed. 734 (6th C. C. A.); *Canda Bros.* v. *Michigan Malleable Iron Co.*, 152 Fed. 178 (6th C. C. A.); *Johnston* v. *Southern Well Works*, 208 Fed. 145 (5th C. C. A.); *Dibble* v. *Augur*, 7 Blatch 86 (91), Fed. Cas. No. 3,879; *May* v. *Juneau*, 30 Fed. 241; *Kaolatype Engraving Co.* v. *Hoke*, 30 Fed. 444; *Emerson* v. *Hubbard*, 34 Fed. 327; *Jones* v. *Berger*, 58 Fed. 1006; *Leadam* v. *Ringgold Co.*, 140 Fed. 611; *Herman* v. *Detroit Shipbuilding Co.*, 295 Fed. 423, 424.

The decision of the court below that such instruments of seizure, which the statute declared should have the same force and effect as an assignment, covered accrued royalties as well as the patents themselves is in conflict with the decisions of this Court and the Circuit Courts of Appeals of the Fifth and Sixth Circuits, cited above, as well as with settled federal law.

2. In deciding that the accrued royalties, as well as the patents, were seized the court below decided an im-

portant question of federal law which has not been but should be settled by this Court.

3. In deciding that the suits of the German owners could not be maintained under Section 10 (f) of Trading with the Enemy Act, either as originally enacted or as amended by the Settlement of War Claims Act of 1928, the court below decided an important question of federal law which has not been but should be settled by this Court.

4. In holding the amendment of Section 10 (f), by the Settlement of War Claims Act of 1928, unconstitutional as applied to the circumstances presented the court below decided an important question of federal law which has not been but should be settled by this Court.

5. As a part of the Settlement of War Claims Act of 1928 Congress intended to confirm in the former owners of patents the right to recover royalties which had accrued thereunder under the terms of said Act prior to their seizure and, in failing to give effect to such intent, the court below decided a question of national and international importance which has not been and should be settled by this Court.

6. In failing to give effect to the Settlement of War Claims Act of 1928 as a legislative interpretation of Section 10 (f) of the Trading with the Enemy Act as originally enacted, the Court below decided an important question of Federal law in conflict with the rule of decision laid down by this Court in *Cope* v. *Cope*, 137 U. S. 682, 688 and in *United States* v. *Stafoff*, 260 U. S. 477, 480.

SPECIFICATION OF ERRORS.

The Circuit Court of Appeals erred

1. In holding that the accrued royalties were seized.

2. In holding that only such persons who were the owners of patents at the time of the institution of suits, could bring such suits for the recovery of accrued royalties under Trading with the Enemy Act.

3. In holding that the amendment of Section 10 (f) of Trading with the Enemy Act by Section 19 of Settlement of War Claims Act of 1928 was, as applied to the facts of this case, unconstitutional.

4. In affirming the decree of the District Court dismissing the petitioners' several bills and in affirming so much of the decree in the Chemical Foundation suit as found it to be the owner of the accrued royalties.

WHEREFORE, your petitioners respectfully pray that writs of certiorari be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Third Judicial Circuit, sitting in Philadelphia, Pennsylvania, commanding said court to certify and send to this Court on a day to be designated a full and complete transcript of the record and of all proceedings of the Circuit Court of Appeals had in this cause, to the end that this cause may be reviewed and determined by this Court; that the decrees of the Circuit Court of

Appeals be reversed and that the petitioners be granted such other and further relief as may seem proper.

FARBWERKE vormals MEISTER LUCIUS & BRUNING,

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm. ROESSLER, and

BADISCHE-ANILIN & SODA-FABRIK,

by

FREDERICK H. WOOD

ALMUTH C. VANDIVER

BRUCE BROMLEY

CHARLES F. CURLEY

Attorneys for Petitioners.

BRIEF IN SUPPORT OF THE PETITION.

Opinions below.

The opinion of the District Court (R. 176-189) is reported in 29 F. (2d) 597. The opinion of the Circuit Court of Appeals (R. 251-263) is reported in .. F. (2d) .....

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (28 USCA §347 (a)). The decrees of the Circuit Court of Appeals for the Third Circuit were entered on March 4, 1930 (R. 264-268).

The question presented.

May the German owners of the patents, seized under the Trading with the Enemy Act under instruments of seizure, which did not in express terms seize the royalties accrued under licenses granted under said Act, which patents were subsequently sold, recover such accrued royalties either under said Act, as originally enacted, or under the amendment thereof by the Settlement of War Claims Act, in suits brought within the time specified in said Act?

Statutes.

The pertinent sections of the Trading with the Enemy Act are subsection (c) of Section 7 as enacted (40 Stat. 416) and as amended November 4, 1918 (40 Stat. 1020), subsections (c), (d), (e), (f) and (g) of Section 10 as enacted (40 Stat. 420) and as amended by Settlement of War Claims Act of 1928 (45 Stat. 277), Section 12 as enacted and as amended March 28, 1918 (40 Stat. 460), all of which are reproduced in the appendix.

ARGUMENT.

I. The court below in holding that the accrued royalties were seized rendered a decision in conflict with the decisions of this Court relative to the law governing the assignments of patents and decided an important question of federal law relative to the Trading with the Enemy Act.

Subsection (c) of Section 7 as amended November 4, 1918, under which the patents were seized provided

> "If the President shall so require any money or other property including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade marks, choses in action, and rights and claims of every character and description owing or belonging to or held for, by or on account of, or on behalf of, or for the benefit of, an enemy or ally or enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this Act.
>
> "Any requirement made pursuant to this Act, or a duly certified copy thereof, may be filed, registered, or recorded in any office for the filing, registering, or recording of conveyances, transfers, or assignments of any such property or

rights as may be covered by such requirement (including the proper office for filing, registering, or recording conveyances, transfers, or assignments of patents, copyrights, trade-marks, or any rights therein or any other rights); and if so filed, registered, or recorded *shall impart the same notice and have the same force and effect as a duly executed conveyance, transfer, or assignment* to the Alien Property Custodian so filed, registered, or recorded."

Congress thus intended that the seizure should be evidenced by a "requirement" or written instrument, which, in the case of patents, should "have the same force and effect as a duly executed . . . assignment . . ." The President delegated the power conferred to the Alien Property Custodian, by whom the patents were seized. The "requirement" or instrument of seizure in respect of each * covered

---

*The instrument of seizure in respect of Patent No. 868,294, dated and recorded March 26, 1919, was in the following form, the two other instruments being substantially similar:

DEMAND FORM (3)

Trust No. 12079
Report No. 38124

PATENT OWNED BY ENEMY SUBJECT TO THE RIGHTS OF OTHERS.

E. I. Du Pont de Nemours & Company,
Wilmington, Delaware

H. A. Metz Laboratories, Inc.,
New York, N. Y.

To The Commissioner of Patents,
Washington, D. C.

To All to Whom These Presents May Come:

I, FRANCIS P. GARVIN, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of

"said letters patent and every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof."

Congress known as the "Trading With the Enemy Act," approved October 6, 1917, and the amendments thereto and the executive orders and proclamations issued in pursuance thereof, under and by virtue of the authority vested in me as Alien Property Custodian, after investigation, do determine that

Farbwerke vorm. Meister, Lucius & Bruning,
Hochst-on-the-Main, Germany

is an enemy not holding a license granted by the President within the purview of said Act as amended and said orders and proclamations; and I do further, after investigation, determine that certain letters patent of the United States, identified as follows:

Patent No.	*Date of Issue*	*Title*
868,294	Oct. 15, 1907	Process of producing Phenylglycin and its homologues

and every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof, subject to the rights of

E. I. Du Pont de Nemours & Company
Wilmington, Delaware

belongs to, or is held for, or on account of, or on behalf of, or for the benefit of said enemy,

Farbwerke vorm. Meister, Lucius & Bruning,
Hochst-on-the-Main, Germany

As such Alien Property Custodian I do seize said letters patent and every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof, subject to the rights of

E. I. Du Pont de Nemours & Company
Wilmington, Delaware

and I hereby require that you convey, transfer, assign and deliver the same to me, to be by me, as Alien Property Custodian, held, administered and accounted for as provided by law.

I, as Alien Property Custodian, do request that the Commissioner of Patents record this requirement upon the books and

It is well settled that the assignment of a patent and of "every right, title and interest with respect thereto" does not operate to transfer to the assignee either accrued royalties or the right to recover past damages or profits

---

records kept by him, to show the assignment and transfer of letters patent, in respect to said letters patent above mentioned.

This demand is supplementary to any and all requirements and demands heretofore made with respect to said property and is in addition to and without prejudice to such requirements and demands, and shall in no way affect the interests, rights and powers acquired by me as Alien Property Custodian by virtue of such previous requirements and demands.

Witness my hand and seal of office this 22nd day of March, 1919.

FRANCIS P. GARVAN
Alien Property Custodian.

Service of the foregoing demand is hereby acknowledged, this 26th day of March, 1919.

R. F. WHITEHEAD
Acting Commissioner of Patents 485.

Recorded March 26, 1919.

2-392

DEPARTMENT OF THE INTERIOR
UNITED STATES PATENT OFFICE

Received and Recorded on the 26th day of March, 1919 in Liber Z 106, page 301 of Transfers of Patents.

IN TESTIMONY WHEREOF, I have caused the seal of the Patent Office to be hereunto affixed.

JAMES T. NEWTON
Commissioner of Patents

Exd

LLW
6-1697

The instruments of seizure in respect of the other patents belonging to the other petitioners, dated and recorded February 21, 1919 and March 26, 1919, respectively, were identical in form except that the instrument recorded February 21, 1919 did not include the words "subject to the rights of E. I. Du Pont de Nemours & Company, Wilmington, Delaware".

for infringement, but that the same must be expressly assigned. *Moore* v. *Marsh*, 7 Wall. 515, 522; *United States* v. *Loughrey*, 172 U. S. 206, 211, 212; *Crown Die & Tool Co.* v. *Nye Tool & Machine Works*, 261 U. S. 24; *Superior Drill Co.* v. *Nye Mfg. Co.*, 98 Fed. 734; *Canda Bros.* v. *Michigan Malleable Iron Co.*, 152 Fed. 178; *Johnston* v. *Southern Well Works*, 208 Fed. 145; *Dibble* v. *Augur*, 7 Blatch. 86 (91), Fed. Cas. No. 3,879; *May* v. *Juneau*, 30 Fed. 241; *Kaolatype Engraving Co.* v. *Hoke*, 30 Fed. 444; *Emerson* v. *Hubbard*, 34 Fed. 327; *Jones* v. *Berger*, 58 Fed. 1006; *Leadam* v. *Ringgold Co.*, 140 Fed. 611; *Herman* v. *Detroit Shipbuilding Co.*, 295 Fed. 423, 424.

Construed according to the law governing the assignment of patents, the accrued royalties were excluded from the instrument of seizure, and the right to recover damages and profits for infringement were included only because specifically mentioned. This the court below recognized (R. 258) but held that such royalties were nevertheless seized because it was said that the court was dealing not with a voluntary assignment but with "an act of capture."

In so holding, it is respectfully submitted that the court misinterpreted both the statute, under which the patents were seized, and the instrument of seizure itself. The section quoted above makes express reference to patents, which are specifically included in the classes of property which the President is authorized to seize. The second paragraph expressly provides that the instrument of seizure, referred to therein as a "requirement," shall in the case of patents "have the same force and effect as a duly executed * * * assignment" thereof. Congress

thus clearly intended that the force and effect of such instrument should be determined by the law governing the assignment of patents. In holding that it should be otherwise construed, the court below disregarded the plain intent of Congress. Under the Act the Alien Property Custodian undoubtedly had authority to seize the royalties as well as the patents. The Act did not, however, require the Alien Property Custodian to seize all of the property of an enemy owner but authorized the custodian to qualify or limit the seizure in such manner and to such extent as he might in any case see fit. *Sutherland* v. *Guaranty Trust Company of New York*, 11 F. (2d) 696, 698 (2d C. C. A.). The extent of the seizure, must be determined by the words of the instrument of seizure construed in the light of the law governing assignments of patents. Otherwise, the instrument of seizure does not have the same force and effect as an assignment, but a force and effect different therefrom.

Moreover, the express inclusion of damages and profits for past infringement, which under the law governing the interpretation of assignments would not otherwise have been included, and the exclusion of any reference to the accrued royalties is strongly, if not conclusively indicative of an intent to exclude the latter. If, as asserted by the court below, the words "every right, title and interest with respect thereto" were effective to seize the accrued royalties, they were equally effective to seize the right to recover damages and profits for past infringement and no specific mention thereof was required. The instrument of seizure was evidently carefully drawn by a draughtsman familiar with the law governing the assignment of patents, and in conformity

therewith. If it had been intended to cover the accrued royalties as well as such damages and profits, specific mention of both would have been made. It is not, of course, for the court to speculate why the one was included and the other excluded.

Aside from its reference to the act as one of capture, the only reason assigned by the court below for its decision is that "the words 'every right, title and interest with respect to' the patents" on their face would include royalties which are said to be "a very real 'interest' in or in respect to a patent." But the same observation might have been made in respect of the cases cited above, construing assignments.

In *Crown Die & Tool Co.* v. *Nye Tool & Machine Works, supra,* the decision of Judge Blatchford in *Dibble* v. *Augur, supra,* is cited with approval in support of this rule, the opinion also commenting on the fact that Judge Blatchford "subsequently became a justice of this Court and had great experience in the administration of the patent law." The Dibble case may, therefore, be regarded as one of the leading cases on the subject. In that case, Judge Blatchford said:

> "* * * In conveying all of Robertson's 'right, title, interest, claim or demand whatsoever, in, to or under' the patent, it conveys only the right to claims for infringements which should be committed after such assignment. (*Moore* v. *Marsh,* 7 Wallace, 515.) The words 'claim or demand whatsoever, in, to or under' the patent, are not sufficient to cover claims for past infringements * * *" (pp. 90-91).

That the right to recover for past damages or for royalties does not inhere in the patent itself likewise appears from the opinion of the late Chief Justice in *Superior Drill Co.* v. *Nye Mfg. Co., supra,* in which it is said:

> "* * *. Claims for damages for past trespasses (in respect of a patent) do not pass by any conveyance of the thing trespassed upon. They are mere choses in action, independent of the thing injured, which pass to the administratrix as such, and which must be specifically assigned if they are to pass with the patent."

Accrued royalties are even more independent of the patent, itself. A suit for the recovery of royalties is not a suit arising under the patent laws over which the Federal courts have exclusive jurisdiction, but one for the enforcement of contract rights in which the sole jurisdiction is in the state courts, except where Federal jurisdiction may be invoked on the ground of diverse citizenship. *Crown Company* v. *Nye Tool Works, supra, Albright* v. *Teas,* 106 U. S. 613; *Pratt* v. *Paris Gas Light & Coke Co.,* 168 U. S. 255. It is true, that the power to exact royalties in the first instance grows out of the patent, but the royalties themselves do not arise thereunder but out of the license under which they accrue. In this case no voluntary agreement was entered into between the German owners and the licensee because of the existing state of war. The Government under its war power, however, had the undoubted power to grant such licenses, which when granted had the same force and effect as a contract between the German owners and the

licensee. *Koppel Industrial Car & Equipment Co.* v. *Orenstein & Koppel et al.*, 289 Fed. 446, 451 (2nd C. C. A.)

The District Court was apparently of the opinion (R. 183) that, although the statute in terms provided for the granting of licenses and the payment of royalties, the licensee was in reality an infringer, and that hence the royalties were in fact damages for infringement, the right to recover which was seized. The Circuit Court of Appeals did not adopt this view, which is clearly erroneous. The statute itself expressly and carefully distinguishes between licensees and infringers. Section 10 (*c*) expressly grants to licensees under the statute immunity from suits for infringement while section 10 (*g*) as expressly authorizes the institution of suits by enemy owners against infringers. A person may not at the same time be a licensee and an infringer. In the exercise of the war powers Congress had full power to seize and dispose of enemy property. *United States* v. *Chemical Foundation*, 272 U. S. 1. This being so, it obviously had the power to authorize the granting of licenses without seizing the patent itself, and to confer upon the licensees the immunities from infringement which attach under a license. The greater power obviously includes the lesser. Congress, by carefully chosen phraseology, sought to create the status of the licensor and licensee of enemy owned patents, in order to provide for the lawful use of such patents in the prosecution of the War. Neither may it be doubted that Congress possessed this power.

Since the royalties accruing prior to seizure were never seized, they could not have been sold to the Chemical

Foundation. Nor were they included within the subsequent assignment of the patents to it by the Alien Property Custodian, the language of which is substantially similar to that contained in the instrument of seizure and was likewise in express terms confined to the interest "acquired" by the Alien Property Custodian (R. 106-110).

That Congress did not intend that the seizure of a patent and every right in respect thereof should, without more, operate to seize royalties accrued prior to the seizure, is further evidenced by the amendment of 1928, confirming the right of former enemy owners of seized patents to recover "royalties for the period prior to the sale" of such patents by the Alien Property Custodian. This amendment was passed as part of a comprehensive settlement of the claims growing out of the War as embodied in the Settlement of War Claims Act. If Congress had originally intended that the mere seizure of the patent (without more) should operate as a seizure of the royalties, the amendment of 1928 would be consistent only with a purpose to divest the purchasers of such royalties from the Alien Property Custodian of the rights acquired by such purchase. On the other hand, by construing the original act in accordance with its natural import, whereby the instrument of seizure is to be interpreted by the law governing the interpretation of the assignments of patents, only those royalties specifically seized passed out of the ownership of the former enemy owner of the patent, and the Amendment of 1928 is rendered in all respects consistent with the act in its original form.

II. The court below in holding that the German owners were not the owners of the patents within the meaning of Trading with the Enemy Act as originally enacted and in further holding the amendment of 1928 to be unconstitutional has erroneously determined important questions of federal law which should be finally settled by this Court.

The owner of the patent upon whom the right to recover royalties was conferred by the Act, as originally enacted, concededly meant the enemy owner. In *Hicks* v. *Anchor Packing Co.* the court below held that the subsequent amendment, permitting seizure, limited such right of recovery to the owner of the patent at the time of the institution of the suit and applied the same rule in the instant case. In this the court below erred. The amendment in question did not in express terms take away from former enemy owners the right concededly conferred by the original act to recover the royalties accruing during his period of ownership. Its effect should not be extended beyond that necessary to give full force and effect to the seizure itself. The law governing patents and patent rights recognizes the right of successive owners to recover royalties or damages accruing during their respective periods of ownership and makes such rights dependent not upon ownership of the patent at the time of suit but ownership of the patent at the time of infringement or accrual of the royalties (cases *supra*). The more rational interpretation of the statute in question and the only one consistent with the patent law is that the right to sue for royalties at any time within a year after the end of the

war was a right to be successively exercised by successive owners of the patent at the time that the royalties accrued.

In determining the meaning of the word "owner" as used in the act consideration should also be given to the amendment thereof by the Settlement of War Claims Act. This amendment was presumably prompted by the decision of the court below in the *Hicks* case. That case did not reach this Court and was not conclusive. It had the effect, however, of casting doubt upon the meaning of the Act of Congress in question. The amendment therefore may be assumed to have been intended as a legislative declaration of the purpose of the statute as it then stood. This legislative interpretation while not binding upon this Court is entitled to great weight. *Cope* v. *Cope*, 137 U. S. 682; *U. S.* v. *Stafoff*, 260 U. S. 477; *U. S.* v. *Morton*, 65 Fed. 204; *Board of Commissioners* v. *Alexander*, 58 Okla. 128. It was enacted as a part of the Settlement of War Claims Act, having for its purpose a comprehensive settlement of the various claims of the several governments and their nationals against each other. As a part of such settlement it undertook to make plain the rights of enemy owners to recover royalties, which had accrued prior to seizure of their patents, provided suits therefor had been instituted within a year after the termination of the war in accordance with the provisions of the Trading with the Enemy Act as originally enacted. This intent should not be lightly disregarded. It is believed that the interpretation placed by the court below, upon the original act, as amended by the provision permitting seizure, is plainly erroneous. It is certainly not one required by the language employed. But, if the

matter be involved in doubt that doubt should be resolved in favor of the subsequent interpretation placed upon the act by Congress itself.

Proceeding upon the premise that under the original Act, as subsequently amended by the provisions governing seizure, enemy owners were not the owners within the meaning of such statute, the court below held that the amendment of 1928, as applied to the facts and circumstances of this case, was unconstitutional. This conclusion, resting upon a false premise, must fall. Assuming, however, the correctness of the premise, the conclusion does not follow. The Settlement of War Claims Act was as much an exercise of the war power as were the statutes passed during the war itself. It had for its purpose the settlement of claims growing out of the war. In *Miller* v. *United States,* 11 Wall. 268, 304, this Court declared that the war powers of the government were not affected by the restrictions of the Fifth and Sixth Amendments. This broad statement has since been qualified, *Hamilton* v. *Kentucky Distilleries Company,* 251 U. S. 146, 156, but it may not be doubted that an act, which would be void under the Fifth Amendment, if not referable to the war power, may be sustained, if referable thereto, *Highland* v. *Russell Car & Snow Plow Co.,* 279 U. S. 253. That case involved the constitutionality of the Lever Act as a price fixing statute. Except as an exercise of the war power, such an act of Congress would have clearly violated the Fifth Amendment. Its validity however, as an exercise of the war power was sustained. The rule appears to be that the Fifth Amendment imposes no greater limitation upon the war power than does

the Fourteenth Amendment upon the police power of the states, *Hamilton* v. *Kentucky Distilleries Co., supra.* The usual test of the application of the Fourteenth Amendment to the police power is whether the Act in question is arbitrary, or capricious, or involves an unwarranted and unreasonable interference with private rights, having no direct relation to the objects and purposes for which the police power may be exercised. The amendment of 1928 is subject to none of these infirmities. The effect of the decision of the court below is to permit the licensee under licenses granted under Trading with the Enemy Act to escape the payment of any royalties for the use of the patents in question prior to their seizure. By the acceptance of the license it became obligated to pay such royalties. Assuming that the effect of the amendments providing for seizure was to deprive enemy owners of the right theretofore accorded to sue for such royalties, the amendment of 1928 confirming such rights in them, where suits had already been brought in accordance with the statute, is neither arbitrary, nor capricious, nor does it constitute an unreasonable and unwarranted interference with private property, or private rights.

In so far as the constitutional objection raised rests upon an assumed invasion of the property rights of the Chemical Foundation as assignee of the patents, the objection urged is not open to duPont the licensee. *Missouri Rate Cases,* 230 U. S. 474, 508; *Aetna Insurance Company* v. *Hyde,* 275 U. S. 440; *Dahnke-Walker Co.* v. *Bondurant,* 257 U. S. 282; *Heald* v. *District of Columbia,* 259 U. S. 114; *Straus* v. *Foxworth,* 231 U. S. 162. Nor were any rights of the Chemical Founda-

tion involved. The royalties were never seized and were never sold to it. Were it otherwise, the Chemical Foundation in its suit asserted no rights to the accrued royalties. Its bill of complaint sought only a recovery of the royalties accruing after the sale to it.

Moreover; it is by no means plain that in the exercise of its war power, and as a part of the settlement made of claims growing out of the war, it would have been beyond the constitutional power of Congress to restore to enemy owners the right to royalties, which had accrued under licenses granted *in invitum* by the United States, whatever obligations the United States might be required to assume towards its former assignee of such royalties. It is unnecessary, however, to consider this question further. For the reasons hereinbefore stated, only by a most strained construction of the original Act and of the instruments of seizure may the amendment of 1928 be interpreted as having had this effect.

It may not be doubted that under the Settlement of War Claims Act Congress intended that these and other enemy owners similarly situated should recover royalties accrued under licenses granted under the Trading with the Enemy Act. The grounds upon which this right are contested are believed to be highly technical. In any event, it is respectfully submitted that the questions involved are of such national and international importance as to warrant the assumption of jurisdiction by this Court.

CONCLUSION.

It is respectfully submitted that in view of the importance of the question involved and the apparent conflict between the decision of the court below with decisions of this Court in analagous cases, the writs of certiorari should be granted.

Respectfully submitted,

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APPENDIX

Sections 7, subsection (c), 10, subsections (c), (d), (e), (f) and (g), and 12, as enacted and amended,

of

Trading with the Enemy Act

(Act of Oct. 6, 1917, ch. 106, 40 Stat. 411, 50 USCA Append. pp. 189-311)

Section 7, subsection (c) as enacted:

"If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian."

Section 7, subsection (c), as amended Nov. 4, 1918 (ch. 201, § 1, 40 Stat. 1020):

"If the President shall so require any money or other property including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade marks, choses in action, and rights and claims of every character and description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation

shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this Act.

"Any requirement made pursuant to this Act, or a duly certified copy thereof, may be filed, registered, or recorded in any office for the filing, registering, or recording of conveyances, transfers, or assignments of any such property or rights as may be covered by such requirement (including the proper office for filing, registering, or recording conveyances, transfers, or assignments of patents, copyrights, trade-marks, or any rights therein or any other rights); and if so filed, registered, or recorded shall impart the same notice and have the same force and effect as a duly executed conveyance, transfer, or assignment to the Alien Property Custodian so filed, registered, or recorded.

"Whenever any such property shall consist of shares of stock or other beneficial interest in any corporation, association, or company or trust, it shall be the duty of the corporation, association, or company or trustee or trustees issuing such shares or any certificates or other instruments representing the same or any other beneficial interest to cancel upon its, his, or their books all shares of stock or other beneficial interest standing upon its, his, or their books in the name of any person or persons, or held for, on account of, or on behalf of, or for the benefit of any person or persons who shall have been determined by the President, after investigation, to be an enemy or ally of enemy, and which shall have been required to be conveyed, transferred, assigned, or delivered to the Alien Property Custodian or seized by him, and in lieu thereof to issue certificates or other instruments for such shares or other beneficial interest to the Alien Property Custo-

dian or otherwise, as the Alien Property Custodian shall require.

"The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this Act, and in the event of sale or other disposition of such property by the Alien Property Custodian, shall be limited to and enforced against the net proceeds received therefrom and held by the Alien Property Custodian or by the Treasurer of the United States."

Section 10, subsections (c), (d), (e), (f) and (g), as enacted:

"(c) Any citizen of the United States or any corporation organized within the United States desiring to manufacture, or cause to be manufactured, a machine, manufacture, composition of matter, or design, or to carry on, or to use any trade-mark, print, label or cause to be carried on, a process under any patent or copyrighted matter owned or controlled by an enemy or ally of enemy at any time during the existence of a state of war may apply to the President for a license; and the President is hereby authorized to grant such a license, nonexclusive or exclusive as he shall deem best, provided he shall be of the opinion that such grant is for the public welfare, and that the applicant is able and intends in good faith to manufacture, or cause to be manufactured, the machine, manufacture, composition of matter, or design, or to carry on, or cause to be carried on, the process or to use the trade-mark, print, label or copyrighted matter. The President may prescribe the conditions of this license, including the fixing of prices of articles and products necessary to the health of the military and naval forces of the United

States or the successful prosecution of the war, and the rules and regulations under which such license may be granted and the fee which shall be charged therefor, not exceeding $100, and not exceeding one per centum of the fund deposited as hereinafter provided. Such license shall be a complete defense to any suit at law or in equity instituted by the enemy or ally of enemy owners of the letters patent, trade-mark, print, label or copyright, or otherwise, against the licensee for infringement or for damages, royalty, or other money award on account of anything done by the licensee under such license, except as provided in subsection (f) hereof.

"(d) The licensee shall file with the President a full statement of the extent of the use and enjoyment of the license, and of the prices received in such form and at such stated periods (at least annually) as the President may prescribe; and the licensee shall pay at such times as may be required to the alien property custodian not to exceed five per centum of the gross sums received by the licensee from the sale of said inventions or use of the trade-mark, print, label or copyrighted matter, or, if the President shall so order, five per centum of the value of the use of such inventions, trade-marks, prints, labels or copyrighted matter to the licensee as established by the President; and sums so paid shall be deposited by said alien property custodian forthwith in the Treasury of the United States as a trust fund for the said licensee and for the owner of the said patent, trade-mark, print, label or copyright registration as hereinafter provided, to be paid from the Treasury upon order of the court, as provided in subdivision (f) of this section, or upon the direction of the alien property custodian.

"(e) Unless surrendered or terminated as provided in this Act, any license granted hereunder shall continue during the term fixed in the license or in the absence of

any such limitation during the term of the patent, trade-mark, print, label, or copyright registration under which it is granted. Upon violation by the licensee of any of the provisions of this Act, or of the conditions of the license, the President may, after due notice and hearing, cancel any license granted by him.

"(f) The owner of any patent, trade-mark, print, label, or copyright under which a license is granted hereunder may, after the end of the war and until the expiration of one year thereafter, file a bill in equity against the licensee in the district court of the United States for the district in which the said licensee resides, or, if a corporation, in which it has its principal place of business (to which suit the Treasurer of the United States shall be made a party), for the recovery from the said licensee for all use and enjoyment of the said patented invention, trade-mark, print, label, or copyrighted matter; *Provided, however,* That whenever suit is brought, as above, notice shall be filed with the alien property custodian within thirty days after date of entry of suit: *Provided further,* That the licensee may make any and all defenses which would be available were no license granted. The court on due proceedings had may adjudge and decree to the said owner payment of a reasonable royalty. The amount of said judgment and decree, when final, shall be paid on order of the court to the owner of the patent from the fund deposited by the licensee, so far as such deposit will satisfy said judgment and decree; and the said payment shall be in full or partial satisfaction of said judgment and decree, as the facts may appear; and if, after payment of all such judgments and decrees, there shall remain any balance of said deposit, such balance shall be repaid to the licensee on order of the alien property custodian. If no suit is brought within one year after the end of the war, or no notice is filed as above required,

then the licensee shall not be liable to make any further deposits, and all funds deposited by him shall be repaid to him on order of the alien property custodian. Upon entry of suit and notice filed as above required, or upon repayment of funds as above provided, the liability of the licensee to make further reports to the President shall cease.

"If suit is brought as above provided, the court may, at any time, terminate the license, and may, in such event, issue an injunction to restrain the licensee from infringement thereafter, or the court, in case the licensee, prior to suit, shall have made investment of capital based on possession of the license, may continue the license for such period and upon such terms and with such royalties as it shall find to be just and reasonable.

"(g) Any enemy, or ally of enemy, may institute and prosecute suits in equity against any person other than a licensee under this Act to enjoin infringement of letters patent, trade-mark, print, label, and copyrights in the United States owned or controlled by said enemy or ally of enemy, in the same manner and to the extent that he would be entitled so to do if the United States was not at war: *Provided,* That no final judgment or decree shall be entered in favor of such enemy or ally of enemy by any court except after thirty days' notice to the alien property custodian. Such notice shall be in writing and shall be served in the same manner as civil process of Federal courts."

Section 19 of Settlement of War Claims Act of 1928 (Act of March 10, 1928, ch. 167, sec. 19; 45 Stat. 254) which added to Section 10(f), supra, the following paragraph:

"In the case of any such patent, trade-mark, print, label, or copyright, conveyed, assigned, transferred, or

delivered to the Alien Property Custodian or seized by him, any suit brought under this subsection, within the time limited therein, shall be considered as having been brought by the owner within the meaning of this subsection, in so far as such suit relates to royalties for the period prior to the sale of the Alien Property Custodian of such patent, trade-mark, print, label, or copyright, if brought either by the Alien Property Custodian or by the person who was the owner thereof immediately prior to the date such patent, trade-mark, print, label, or copyright was seized or otherwise acquired by the Alien Property Custodian."

Section 12 as enacted:

"That all moneys (including checks and drafts payable on demand) paid to or received by the alien property custodian pursuant to this Act shall be deposited forthwith in the Treasury of the United States, and may be invested and reinvested by the Secretary of the Treasury in United States bonds or United States certificates of indebtedness, under such rules and regulations as the President shall prescribe for such deposit, investment, and sale of securities; and as soon after the end of the war as the President shall deem practicable, such securities shall be sold and the proceeds deposited in the Treasury.

"All other property of an enemy, or ally of enemy, conveyed, transferred, assigned, delivered, or paid to the alien property custodian hereunder shall be safely held and administered by him except as hereinafter provided; and the President is authorized to designate as a depositary or depositaries, of property of an enemy or ally of enemy, any bank, or banks, or trust company, or trust companies, or other suitable depositary or depositaries, located and doing business in the United States. The

alien property custodian may deposit with such designated depositary or depositaries, or with the Secretary of the Treasury, any stocks, bonds, notes, time drafts, time bills of exchange, or other securities, or property (except money or checks or drafts payable on demand which are required to be deposited with the Secretary of the Treasury) and such depositary or depositaries shall be authorized and empowered to collect any dividends or interest or income that may become due and any maturing obligations held for the account of such custodian. Any moneys collected on said account shall be paid and deposited forthwith by said depositary or by the alien property custodian into the Treasury of the United States as hereinbefore provided.

"The President shall require all such designated depositaries to execute and file bonds sufficient in his judgment to protect property on deposit, such bonds to be conditioned as he may direct.

"'The alien property custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which shall come into his possession in pursuance of the provisions of this Act, and, acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, may manage such property and do any acts or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights which may be or become appurtenant thereto or to the ownership thereof, if and when necessary to prevent waste and protect such property and to the end that interests of the United States in such property and rights or of such person as may ultimately become entitled thereto, or to the proceeds thereof, may be preserved and safeguarded. It shall be the duty of every corporation incorporated within the United States and every unincorporated association, or company, or trustee,

or trustees within the United States issuing shares or certificates representing beneficial interests to transfer such shares or certificates upon its, his, or their books into the name of the alien property custodian upon demand, accompanied by the presentation of the certificates which represent such shares or beneficial interests. The alien property custodian shall forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such property or rights so sold by him.

"Any money or property required or authorized by the provisions of this Act to be paid, conveyed, transferred, assigned, or delivered to the alien property custodian shall, if said custodian shall so direct by written order, be paid, conveyed, transferred, assigned, or delivered to the Treasurer of the United States with the same effect as if to the alien property custodian.

"After the end of the war any claim of any enemy or of an ally of enemy to any money or other property received and held by the alien property custodian or deposited in the United States Treasury, shall be settled as Congress shall direct: *Provided, however,* That on order of the President as set forth in section nine hereof, or of the court, as set forth in sections nine and ten hereof, the alien property custodian or the Treasurer of the United States, as the case may be, shall forthwith convey, transfer, assign, and pay to the person to whom the President shall so order, or in whose behalf the court shall enter final judgment or decree, any property of an enemy or ally of enemy held by said custodian or by said Treasurer, so far as may be necessary to comply with said order of the President or said final judgment or decree of the court: *And provided further,* That the Treasurer of the United States, on order of the alien property custodian shall, as provided in section ten hereof, repay to the licensee any funds deposited by said licensee."

Section 12, fourth paragraph, as amended March 28, 1918 (ch. 28, § 1, 40 Stat. 460):

"The alien property custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which has been or shall be, or which has been or shall be required to be, conveyed, transferred, assigned, delivered, or paid over to him in pursuance of the provisions of this Act, and, in addition thereto, acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, shall have power to manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights or powers which may be or become appurtenant thereto or to the ownership thereof in like manner as though he were the absolute owner thereof: *Provided,* That any property sold under this Act, except when sold to the United States, shall be sold only to American citizens, at public sale to the highest bidder, after public advertisement of time and place of sale which shall be where the property or a major portion thereof is situated, unless the President stating the reasons therefor, in the public interest shall otherwise determine: *Provided further,* That when sold at public sale, the alien property custodian upon the order of the President stating the reasons therefor, shall have the right to reject all bids and resell such property at public sale or otherwise as the President may direct. Any person purchasing property from the alien property custodian for an undisclosed principal, or for re-sale to a person not a citizen of the United States, or for the benefit of a person not a citizen of the United States, shall be guilty of a misdemeanor, and, upon conviction, shall be subject to a fine of not more than $10,000, or imprisonment for not more than ten years, or both, and the property shall be forfeited to the United States. It shall be

the duty of every corporation incorporated within the United States and every unincorporated association, or company, or trustee, or trustees within the United States issuing shares or certificates representing beneficial interests to transfer such shares or certificates upon its, his, or their books into the name of the alien property custodian upon demand, accompanied by the presentation of the certificates which represent such shares or beneficial interests. The alien property custodian shall forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such property or rights so sold by him."

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Nos. 179 to 182 inc.

JUN 4

CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930

No.

FARBWERKE vormals MEISTER LUCIUS & BRUNING; DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm. ROESSLER, and BADISCHE-ANILIN & SODA-FABRIK,

Petitioners,

against

CHEMICAL FOUNDATION, INC.; E. I. duPONT deNEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,

Respondents.

SUPPLEMENTAL BRIEF IN BEHALF OF PETITIONER, BADISCHE-ANILIN & SODA-FABRIK.

ALMUTH C. VANDIVER,
Attorney for Petitioner,
Badische-Anilin & Soda-Fabrik.

[NOTE: For Additional Captions See Inside Front Cover.]

No.

FARBWERKE vormals MEISTER LUCIUS & BRUNING,
Petitioner,

against

E. I. duPONT deNEMOURS & CO., and WALTER O. WOODS,
as Treasurer of the United States,
Respondents.

No.

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm.
ROESSLER,
Petitioner,

against

E. I. duPONT deNEMOURS & CO., and WALTER O. WOODS,
as Treasurer of the United States,
Respondents.

No.

BADISCHE-ANILIN & SODA-FABRIK,
Petitioner,

against

E. I. duPONT deNEMOURS & CO., and WALTER O. WOODS,
as Treasurer of the United States,
Respondents.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930

FARBWERKE vormals MEISTER LUCIUS & BRÜNING; DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm. ROESSLER, and BADISCHE-ANILIN & SODA-FABRIK,

Petitioners,

against

CHEMICAL FOUNDATION, INC.; E. I. duPONT deNEMOURS & Co., and WALTER O. WOODS, as Treasurer of the United States,

Respondents.

No.

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No.

October Term, 1930

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm. ROESSLER,

Petitioner,

against

E. I. duPONT deNEMOURS & Co., and WALTER O. WOODS, as Treasurer of the United States,

Respondents.

No.

October Term, 1930

BADISCHE-ANILIN & SODA-FABRIK,

Petitioner,

against

E. I. duPONT deNEMOURS & Co., and WALTER O. WOODS, as Treasurer of the United States,

Respondents.

No.

October Term, 1930

SUPPLEMENTAL BRIEF IN BEHALF OF PETITIONER, BADISCHE-ANILIN & SODA-FABRIK.

This is a petition for writs of certiorari to the Circuit Court of Appeals for the Third Circuit to review the decrees of that Court, entered March 4, 1930, affirming decrees of the United States District Court for the District of Delaware.

The Circuit Court of Appeals has declared Section 19 of the "Settlement of War Claims Act of 1928" approved March 10, 1928, amending Section 10 (f) of the Trading with the Enemy Act to be unconstitutional.

This decision presents "an important question of federal law which has not been but should be settled by this Court" (Par. 5, subd. (b) of Rule 38 of the Supreme Court Rules).

The judgment of the Circuit Court of Appeals affirmed a decree of the District Court for the District of Delaware, dismissing the complaints of the plaintiffs, Farbwerke vormals Meister, Lucius & Bruning, Deutsche Gold & Silber Scheide Anstalt vormals Roessler and Badische Anilin & Soda Fabrik, hereinafter referred to as the "alien appellants", against the appellee E. I. du Pont deNemours & Company, hereinafter referred to as "duPont", and the appellee Walter O. Woods, as Treasurer of the U. S.

These complaints asked for the fixation by the Court of reasonable royalties for the use by the appellee duPont, of certain patents of the alien appellants prior to the assignment of the same, by the Alien Property Custodian,

to the appellee Chemical Foundation, Inc., hereinafter referred to as "the Foundation". The complaints further prayed that the Treasurer of the U. S. be directed to pay to the alien appellants, out of the monies deposited with him by duPont such amount as might be necessary to satisfy the Court's judgment.

STATEMENT OF FACTS.

April 6, 1917, the United States entered the war with Germany.

October 6, 1917, the Trading with the Enemy Act became effective.

Section 10, subdivision (f) of this Act is as follows:

> "(f) The owner of any patent, trade-mark, print, label, or copyright under which a license is granted hereunder may, after the end of the war and until the expiration of one year thereafter, file a bill in equity against the licensee in the district court of the United States for the district in which the said licensee resides or, if a corporation, in which it has its principal place of business (to which suit the Treasurer of the United States shall be made a party), for recovery from the said licensee for all use and enjoyment of the said patented invention, trade-mark, print, label, or copyright matter; provided, however, That whenever suit is brought, as above, notice shall be filed with the alien property custodian within thirty days after date of entry of suit; provided further, That the licensee may make any and all defenses which would be available were no license granted. The court on due pro-

ceedings had may adjudge and decree to the said owner payment of a reasonable royalty. The amount of said judgment and decree, when final, shall be paid on order of the court to the owner of the patent from the fund deposited by the licensee, so far as such deposit will satisfy said judgment and decree; and the said payment shall be in full or partial satisfaction of said judgment and decree, as the facts may appear; and if, after payment of all such judgments and decrees, there shall remain any balance of said deposit, such balance shall be repaid to the licensee on order of the alien property custodian. If no suit is brought within one year after the end of the war, or no notice is filed as above required, then the licensee shall not be liable to make any further deposits, and all funds deposited by him shall be repaid to him on order of the alien property custodian. Upon entry of suit and notice filed as above required, or upon repayment of funds as above required, or upon repayment of funds as above provided, the liability of the licensee to make further reports to the President shall cease.

"If suit is brought as above provided, the court may, at any time, terminate the license, and may, in such event, issue an injunction to restrain the licensee from infringement thereafter, or the court, in case the licensee, prior to suit, shall have made investment of capital based on possession of the license, may continue the license for such period and upon such terms and with such royalties as it shall find to be just and reasonable."

Section 10, subdivision (c), of the same Act provided that the President might license any American indi-

vidual or corporation to use during the war any process under any patent "owned or controlled by an enemy" and might fix the fee for such license.

October 12, 1917, the President delegated his licensing authority under Section 10 to the Federal Trade Commission (Executive Order of October 12, 1917).

January 21, 1918, duPont was licensed by the Federal Trade Commission to make, use and vend certain inventions relating to indigo production, referred to in United States Letters Patent of the alien appellants who were then enemy owners thereof.

November 4, 1918, the Congress amended Section 7, subdivision (c), and authorized the Alien Property Custodian to seize enemy-owned patents.

Thereafter the patents affected by this litigation were seized by the Alien Property Custodian and the seizures recorded in the office of the Commissioner of Patents on February 21, 1919 and March 26, 1919, respectively.

On or about April 10, 1919, the Alien Property Custodian assigned the seized patents affected by this litigation, with others, to the Foundation.

July 1, 1921, war with Germany officially ended.

Within one year thereafter the alien appellants, claiming to be the owners of the patents, in conformity with Section 10 (f) of the Trading with the Enemy Act, brought suit against duPont for the fixation of a reasonable royalty for the use by duPont under the Federal Trade Commission licenses of the patents affected by this litigation.

At the same time, the Foundation, claiming to be the owner, brought similar suits against duPont.

The alien appellants and the Foundation, under the provisions of Section 10 of the Trading with the Enemy Act, joined the Treasurer of the United States as a party.

On the 11th day of October, 1926, this Court decided in the case of *U. S.* v. *Chemical Foundation* that the Foundation was the owner of the patents in suit.

On March 10, 1928, the War Claims Settlement Act of 1928 was approved by the President.

Section 19 of that Act is as follows:

> "Sec. 19. Subsection (f) of section 10 of the Trading with the Enemy Act, as amended, is amended by adding at the end thereof the following new paragraph:
>
> > 'In the case of any such patent, trade-mark, print, label, or copyright, conveyed, assigned, transferred or delivered to the Alien Property Custodian or seized by him, any suit brought under this subsection, within the time limited therein, shall be considered as having been brought by the owner within the meaning of this subsection, in so far as such suit relates to royalties for the period prior to the sale by the Alien Property Custodian of such patent, trade-mark, print, label, or copyright, if brought either by the Alien Property Custodian or by the person who was the owner thereof immediately prior to the date such patent, trade-mark, print, label, or copyright, was seized or otherwise acquired by the Alien Property Custodian.' "

This statute provides that German Nationals owning patents immediately prior to the seizure thereof by the

Alien Property Custodian may maintain actions under Subsection (f) of Section 10 of the Trading with the Enemy Act against American licensees of such patents for the fixation of royalties prior to the sale of the patents, provided such German Nationals instituted suits for such purpose within one year after the declaration of Peace.

The six suits, aforesaid, consolidated by consent came on to be heard in the District Court of Delaware on April 30, 1928.

The alien appellants at the trial restricted their prayer to the fixation of a reasonable royalty for the period *prior to April 10, 1919, the date of the assignment of the patents by the Custodian to the Foundation.*

The Foundation asked for the fixation of a reasonable royalty only for the period *subsequent to April 10, 1919, the date the Foundation became the owner of the patents.*

The defendant duPont moved to dismiss the alien appellants' complaints on the ground that they were not the owners of the patents. The Treasurer of the United States, by the Attorney General, moved to dismiss the complaints of the Foundation and moved that the Custodian be substituted as plaintiff for the alien appellants.

On December 15, 1928, by decree, the District Court denied the motions of the Attorney General and granted the motion of duPont to dismiss the appellants' complaints.

The Circuit Court of Appeals affirmed the decree of the District Court.

ISSUES BEFORE THE DISTRICT COURT.

The alien appellants asked for the fixation of a reasonable royalty for the period prior to the sale to the Foundation.

The Foundation asked for the fixation of a reasonable royalty subsequent to this period.

DuPont opposed the fixation of a reasonable royalty as prayed for in the alien appellants' bill as limited at the trial to the period above stated.

The Attorney General opposed the fixation of a reasonable royalty for the period subsequent to sale as prayed for by the Chemical Foundation.

The Attorney General also requested substitution of the Custodian for the alien appellant plaintiffs.

There was no controversy before the Court as to the fact that the alien appellants were the owners of the patents involved in this litigation at the time of the seizure of the same by the Alien Property Custodian, and that the alien appellants had brought suit within one year after the end of the war.

The alien appellants contend that the Court erred in failing to follow the provisions of the War Claims Settlement Act of 1928 above quoted, validating the suits of the alien appellants brought in 1922 and that the judgment of the District Court affirmed by the Court of Appeals, dismissing the alien appellants' bill, accordingly should be reversed.

LOWER COURTS' REASONS FOR DISMISSING ALIEN APPELLANTS' BILLS.

Opinion of the District Court.

The District Court held that:

> "By executive action, i.e., Executive Orders of the President and assignments from the Alien Property Custodian to the Foundation the Chemical Foundation became the owner of the choses in action, or right to recover from the defendant the accrued royalties, originally belonging to the German plaintiffs. It is true that the Chemical Foundation has elected not to exercise its right to recover the accrued royalties from the defendant. But such election does not operate as an assignment of that right either to the German plaintiffs or to the Alien Property Custodian. Consequently, the German plaintiffs are without cause of action and without right to recover from the defendant the accrued royalties unless by the amendment of March 10, 1928 to sec. 10 (f) of the Trading with the Enemy Act Congress divested the Chemical Foundation of its right and revested the Germans therewith. That right is a chose in action. A chose in action is property. The fifth amendment to the Constitution of the United States, providing that no person shall be deprived of his property without due process of law, denies to the Congress power to transfer property from one to another directly or indirectly. *Ochoa* v. *Hermandez,* 230 U. S. 139, *Gilman* v. *Tucker,* 128 N. Y. 190, 28 N. E. 1040.

* * * *

"The German plaintiffs, correctly asserting that the war powers of Congress are not limited or affected by the restrictions of the fifth and sixth amendments, *Miller* v. *United States*, 11 Wall. 268, 304-305, take the position that the amendment of 1928 to section 10 (f) of the Trading with the Enemy Act was an exercise by Congress of its constitutional power to 'make rules concerning captures on land and water.' Constitution, Article I, Sec. 8. The Treaty of Peace with Germany was signed in Berlin, August 25, 1921. The President's Proclamation on November 14, 1921, declared the war 'terminated on July 2, 1921.' If, however, the Treaty of Peace did not constitute a bar to subsequent action by Congress concerning captures on land and water and the amendment of 1928 was in truth an exercise of its war powers that fact constitutes a denial that the amendment was intended to operate upon or with respect to the choses in action here involved, for that property having been on April 10, 1919 sold and passed into the channels of commerce under the express authority of Congress, Sec. 12 of the Trading with the Enemy Act, as amended March 28, 1918, 40 Stat. 460, *United States* v. *Chemical Foundation*, 272 U. S. 1, the war powers of Congress with respect to that property became, thereupon *functus officio*. After its sale the Government did not hold it and it no longer bore the stamp 'captured property.' Captured property sold under authority of Congress to American citizens passed from under the powers of Congress touching captured property as fully and completely as a patented article sold by the patentee passes from under the monopoly

of the patent. See *Chaffee* v. *Boston Belting Company,* 22 How. 217, 223. The property to which the Congress reserved the right to make disposition after the war did not include that sold under its authority during the war. The amendment of 1928 is wholly without effect upon *United States* v. *Chemical Foundation,* 272 U. S. 1, and *Hicks* v. *Anchor Packing Co.,* 16 Fed. (2d) 723, (C. C. A. 3)."

The Court of Appeals Opinion.

The Court of Appeals held:

"The right to the accrued royalties, in whomsoever vested, is a chose in action; a chose in action is property; and an act which takes property from one person and gives it to another without legal procedure to determine their rights and without compensation is a deprivation of property without due process of law and is violative of the Fifth Amendment to the Constitution. Subscribing to the reasoning of the learned trial judge, we hold that the Amendment of 1928, valid and useful perhaps in many situations, did not restore to the German plaintiffs ownership of either the patents or the royalties. It follows that they did not own the royalties when they filed their bills—the critical time under the statute supplying the remedy—and that, in consequence, the decrees dismissing their suits must be affirmed. * * * We subscribe to the reasoning of the learned trial judge on the main issues and the related issues of these cases and direct that the decrees be in all respects affirmed."

THE ISSUE BEFORE THIS COURT.

Shall the Judiciary give full force and effect to Section 19 of the Settlement of War Claims Act of 1928

or

Is Section 19 of the Settlement of War Claims Act of 1928 repugnant to the provisions of the Constitution, and especially the Fourth and Fifth Amendments thereto, and therefore void?

Section Nineteen (19) of the Settlement of War Claims Act of 1928 is a valid exercise of the Constitutional power of Congress to make rules concerning captures and to dispose of property of the United States.

Determination of the issues, in this case, affects monies paid to, and now held by, the Treasurer of the United States.

The monies were paid by American citizens and corporations, as license fees, for the use of enemy owned patents.

The period during which payment was made began October 6, 1917 (the effective date of the Trading with the Enemy Act) and ended July 1, 1922 (one year after the ending of the War, as proclaimed by the President).

Consideration of the nature and disposition of these funds falls within three periods, i.e.:

1. From October 6, 1917 to February 21, 1919 and March 26, 1919;

2. From February 21, 1919 and March 26, 1919 to April 10, 1919; and

3. From April 10, 1919 to July 1, 1922.

The first period comprises the time between the effective date of the Trading with the Enemy Act and the date of the seizure by the Alien Property Custodian of the patents, involved in this litigation, owned up to that time by enemies.

The second period comprises the time between seizure by the Custodian and his assignment of the patents to the Foundation.

The third period comprises the time, after assignment to the Foundation, of continued payments by American licensees under Federal Trade Commission licenses, until one year after the war.

During the first period, i.e., from October 6, 1917 to February 21, 1919 and March 26, 1919, the monies in the hands of the Treasurer were trust funds for the licensee who paid them and for the enemy owner of the patent, to be paid from the Treasury, upon the order of the Judiciary, if the enemy owner brought suit for the fixation of a reasonable royalty, within one year after the Peace. Otherwise, they were to be returned to the licensee, upon the order of the Custodian, if no suit was brought by the enemy owner. (Sec. 10, subdivisions (d) and (f).)

The pre-seizure policy of the Congress is apparent from the statute.

Capture of the *use* of enemy patents was effected.

This operated to destroy the monopoly of the patent; to render nugatory the patentee's right to exclude all others from use.

There was, at this time, neither confiscation nor sequestration of the letters patent.

Neither the letters patent nor the right to use was dedicated, freely and without restriction, to the public.

Fees were to be fixed, paid and held in the Treasury to await judicial or executive action, in conformity with the statute.

The Congressional policy undergoes a change on March 28, 1918 and November 4, 1918.

On March 28, 1918, the amendment to Section 12 of the original act enlarged the common law trustee powers of the Custodian to permit this official to exercise all the rights of ownership of seized property.

On November 4, 1918, the amendment to Section 7 (subdivision c) provided that patents, upon demand, must be transferred and assigned to the Custodian.

Section 10 (f) was not amended, in any way, until Section 19 of the War Claims Settlement Act of 1928 was passed.

The question now arises, Did the Custodian's seizure of the patents, pursuant to the power granted in these amendments, and of every right appurtenant to ownership thereof, change the statutory trust fund nature of the monies still held by the Treasurer?

In the absence of express Congressional statement to that effect, counsel for the alien appellants contend that no change of status occurred.

Title was at all times in the United States of America, either as Trustee before seizure, subject to divestment by judicial or executive action, or after seizure as absolute owner, subject to divestment only by Congress.

The Custodian's title was official and not personal. He possessed neither official nor personal statutory, or other, authority to dispose of these accumulated monies. That power resided only in Congress.

The Custodian seized "every right, title and interest" with respect to the patents, "including all damages and profits" recoverable "for past infringement".

None of the Federal Trade Commission licensees had infringed.

Subsection (c) of Section 10 provided that the license "shall be a complete defense to any suit at law or in equity instituted by the enemy or ally of enemy owners of the letters patent * * * against the licensee for infringement or for damages, royalty, or other money awarded on account of anything done by the licensee under such license except as provided in Subsection (f) hereof".

The Custodian's assignment to the Foundation, in addition to the patents, was of "all claims and demands for profits and damages" recoverable for "past infringement".

On March 1, 1921, the Custodian executed a further instrument of assignment to the Foundation in which he assigned thereto "all right, title and interest in and to the choses in action and the funds referred to in Section 10, Subsection (f) of the Trading with the Enemy Act" acquired by the Custodian "by virtue of the seizures" of the patents.

The Custodian's seizure vested in him no title to monies in the hands of the Treasurer and no right to transfer these monies to others.

The maximum right and interest vested in him by seizure of the patents and the incidental choses in action appurtenant thereto, which he might transfer by assignment, was the *right to sue* for royalties accruing *subsequent to assignment.*

Any other construction of his powers would permit the sale of monies in the Treasury, under the guise of assignment of choses in action for *previously accrued* royalties.

Counsel for the alien appellants are of the opinion that the decision of this question is of no materiality in the disposition of this cause.

It may be assumed that as "owner", by virtue of the Custodian's assignment, the Foundation could, one year after the war, sue for the fixation of reasonable royalties.

Counsel for the alien appellants believe this right runs only to the period *subsequent* to the taking of title to the patents.

But the determination of this question, also, is of no materiality for the reason that, if the Foundation possessed this right to sue for royalties accruing prior to taking title, it never exercised this right.

Nor has the Foundation ever asserted the right to obtain royalties for this period.

It is obvious therefore that when the War Claims Settlement Act of 1928 was passed by Congress, an accumulated fund was in the hands of the Treasurer, against which no claim had been asserted, within the statutory period, except by the former enemy owners.

The decision of this Court in *U. S.* v. *Chemical Foundation* rendered the right of the former enemy owners to maintain these suits, extremely doubtful.

THE INTENT OF CONGRESS.

The report to the Senate of its Committee on Finance, submitting the Settlement of War Claims Bill, as agreed to by the House, sets out:

> "The text of the trading with the enemy act as originally enacted, the reports of the committees accompanying the bill, the discussion on the floor of both Houses of Congress, and numerous court decisions under the original act, clearly indicate that the act contemplated sequestration rather than confiscation. The amendment of March 28, 1918, however, broadened the powers of the Alien Property Custodian so as to include the right to manage or sell the property 'as though he were the absolute owner,' and in the so-called *Chemical Foundation* case decided by the Supreme Court on October 11, 1926, the Supreme Court held that when any of the property was sold the former enemy owners were deprived of all rights in the property and in the proceeds derived from the sale. Though it was unnecessary for the purposes of this particular decision, the language of the court is broad enough to be opened to the construction that the seizure of property under the authority of the trading with the enemy act, as amended, together with the applicable treaty provisions, deprived the owner of all rights, whether or not the property was sold, and that the property was virtually confiscated.

"It is to be noted, however, that even if the property should be held to have been confiscated (under the dictum of this decision), in spite of the clear intent of Congress to the contrary, Congress nevertheless has retained at all times absolute authority over this property and could at any time not only return it to the original owner but declare it to be held for the benefit of and for ultimate return to the original owner. This is apparently just what Congress did under the terms of the Winslow Act in providing that $10,000 of the principal shall be returned to each individual owner, and that thereafter the earnings or interest on the property remaining in the hands of the Alien Property Custodian shall be paid to the owner annually up to the sum of $10,000. So that notwithstanding the undoubted power of Congress to confiscate, reaffirmed in the *Chemical Foundation* case, Congress not only has refused to exercise that power up to the present time but has clearly by legislation asserted its policy to be the very contrary of confiscation.

* * * *

"Under subsection (j) of section 9 of the existing law no patent could be returned which had been sold, licensed, or otherwise disposed of or which was involved in litigation, nor could the proceeds from the sale, license, or other disposition of any such patent be returned. Inasmuch as the *Chemical Foundation* case has now been decided, there is nothing to prevent the return of all patents still held by the Alien Property Custodian. Subsection (j) of section 9 of the existing law is accordingly amended to comprise two subsections, the first of which (subsec. [j]) provides for the

return of patents which have been licensed, subject to any existing license, contract, lien or encumbrance, and the second of which (subsec. [k]) provides for the return of the proceeds received from the sale, license or, other disposition. These subsections do not affect the sale to the Chemical Foundation nor the consideration received upon that sale, nor the sales to any other private interests.

"Under subsection (f) of section 10 of the existing law the Alien Property Custodian has instituted certain suits as the 'owner' of certain patents. In the event that it should ultimately be held that the suits were properly instituted the amendment proposed by the bill provides that section 9 shall apply to any royalties paid to him. Section 10 of the trading with the enemy act contains the provisions applicable to the licensing of patents, etc., prescribes the royalty to be paid, and gives to the owner of the patent the right to file a bill in equity against the licensee at any time before the expiration of one year after July 2, 1921, for the determination and payment of a reasonable royalty. Inasmuch as this section accorded full rights to the 'enemy' owner, no amendment is proposed."

REASON FOR THE ENACTMENT OF SECTION 19.

We direct the Court's attention to the last line of the foregoing:

> "Inasmuch as this section accorded full rights to the 'enemy' owner, no amendment is proposed."

This is inaccurate and obviously is in the report upon the mistaken assumption that the Alien Property Custodian had brought suits in every case where licenses were issued (Text of Report, *supra*).

The inaccuracy is corrected upon the floor of the Senate.

Senator Smoot, Chairman of the Finance Committee, presenting the Conference Report on the bill, on February 28, 1928, said:

> "The Senate amended subsection (f) of section 10 of the trading with the enemy act so as to provide that suits for reasonable royalties brought either by the original owners of the patents or by the Alien Property Custodian should be considered as having been properly brought for purposes of this section. It will be noted that subsection (1) of section 9, added by section 13 of the bill, provides that royalties recovered by the Alien Property Custodian in suits instituted by him will be returned under section 9 to the former German owner. The House receded." (Congressional Record, Feb. 28, 1928, p. 3800.)

From the foregoing, it is evident:

1. That the policy of the Congress has ever been, and still is, to retain control of the disposition of enemy property and monies held by the officers of the Government.

2. That the policy of the Congress was to return to the German National, through the instrumentality of suit by the Alien Property Custodian, such reasonable royalties, as accrued

prior to assignment to the Foundation, payable out of the funds in the hands of the Treasurer, as the Court might determine to be reasonable.

3. That when its erroneous view of the litigative vehicle for determination of this reasonable royalty with the assistance of the Judiciary, came to its attention, it amended the proposed bill, by including the former German owner as a proper party plaintiff.

THE SETTLEMENT OF WAR CLAIMS ACT (SEC. 19) WAS BINDING UPON THE LOWER COURTS AND SHOULD HAVE BEEN FOLLOWED.

Governmental power is allocated, with definiteness, in the Constitution of the United States of America, to the legislative, executive and judicial departments.

All legislative powers, i.e., the power to make laws, granted by the states in the Constitution to the Central Government are vested in the Congress. Included therein is the power to declare war "and make rules concerning captures on land and water" (Art. I, Sec. 8, subd. 10). Also the power to make all needful rules and regulations respecting property belonging to the United States (Art. I, Sec. 3, subd. 2). Also to make all laws necessary and proper for carrying into execution the powers vested by the Constitution in the Government (Art. I, Sec. 8, subd. 17).

The "judicial" power, i.e., the power to hear and determine cases in law and in equity arising, among others, between foreign citizens and citizens of one of the States,

to which the U. S. is a party, under the Constitution and laws of the U. S. is vested in the Supreme Court and in inferior Courts established by the Congress (Art. III, Secs. 1, 2).

The judicial power is limited by Section 3 of Article VI which provides that the Constitution and the laws made by the Congress pursuant thereto, with treaties, shall be the supreme law of the land, binding on the judges in every state, anything in the Constitution to the contrary notwithstanding. Judicial officers are bound by oath to support the Constitution. (Art. VI, Sec. 3.)

The lower Courts have declined to apply to the case at bar the law as enacted by the Congress.

The lower Courts, in effect, hold that the Act of Congress under consideration, is unconstitutional, for the reason that it deprives the Chemical Foundation, Inc. of property sold to it by the Executive Department of the Government.

The reasons assigned by the lower Courts for failing to follow the Settlement of War Claims Act (Section 19) will be briefly referred to.

DECISION OF THE DISTRICT COURT.

The learned District Court was of the opinion that

1. The Foundation, by virtue of the assignments of the Custodian and the decision of this Court in *U. S.* v. *Chemical Foundation*, "became the owner of the choses in action, or right to recover from the defendant (duPont), the accrued royalties originally belonging to the German plaintiffs."

2. That the German plaintiffs were without cause of action unless the Settlement of War Claims Act (Section 19) "divested the Chemical Foundation of its right and revested the Germans therewith".

3. That choses in action are property and that the Fifth Amendment to the Constitution forbids the deprivation of property without due process of law and "denies to the Congress power to transfer property from one to another, directly or indirectly".

That captured property sold under authority of Congress to American citizens, and thereby passing into the channels of commerce, was no longer within the powers of Congress touching captured property and that thereupon "the war powers of Congress with respect to that property became *functus officio*".

OPINION OF THE COURT OF APPEALS.

The Court of Appeals subscribed to the reasoning of the District Court, holding that Section 19 of the War Claims Settlement Act was "violative of the Fifth Amendment to the Constitution" and that the alien appellants were not owners of the royalties when the bills of complaint were filed in 1922, "the critical time under the statute supplying the remedy".

If the lower Courts are in error as to the unconstitutionality of Section 19 of the Settlement of War Claims

Act by reason of repugnancy to the Fifth Amendment their views as to the legislative powers of Congress becoming *"functus officio"* when monies of the United States, still held in the Treasury pass, in the judicial imagination, into "channels of commerce" while interesting are not especially important.

RELEVANCY OF THE FIFTH AMENDMENT.

If the Foundation has not been deprived of "property" without due process of law, the question of unconstitutionality is entirely moot.

The Foundation certainly has not been deprived of monies still held by the Treasurer.

It has been deprived of no right to sue for royalties.

The original Trading with the Enemy Act fixed a time limit within which this right should be exercised by any "owner".

Six years after this time limitation expired, still unexercised by the Foundation, the Congress passed the War Claims Settlement Act of 1928.

The Foundation is exercising its right to sue, in the very litigations now before the Court, but only for the period subsequent to April 10, 1919. And no one is contesting their right to recover.

The Foundation has not heretofore asserted and is not now asserting any title to the monies in the hands of the Treasurer, accruing before April 10, 1919, or any right to receive the same by judicial process.

It is perfectly obvious therefore that when Section 19 of the War Claims Settlement Act of 1928 became effective, the Foundation was deprived of neither money, property, nor chose in action, nor right to sue.

THE QUESTION OF CONSTITUTIONALITY IS MOOT.

The respondent, duPont, raised the issue of constitutionality below.

The Foundation did not.

It is well settled, in this Court, that no person unaffected by unconstitutional aspects of legislation may raise the question.

In view of all of the foregoing, it is respectfully submitted that the prayer of the petitioners should be granted.

ALMUTH C. VANDIVER,
Attorney for Petitioner,
Badische-Anilin & Soda-Fabrik.

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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930

No. 179

FARBWERKE vormals MEISTER LUCIUS & BRUNING, DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm. ROESSLER, and BADISCHE-ANILIN & SODA-FABRIK,
Petitioners,

against

CHEMICAL FOUNDATION, INC.; E. I. duPONT deNEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,
Respondents.

No. 180

FARBWERKE vormals MEISTER LUCIUS & BRUNING,
Petitioner,

against

E. I. duPONT deNEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,
Respondents.

No. 181

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm. ROESSLER,
Petitioner,

against

E. I. duPONT deNEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,
Respondents.

No. 182

BADISCHE-ANILIN & SODA-FABRIK,
Petitioner,

against

E. I. duPONT deNEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,
Respondents.

BRIEF FOR PETITIONER FARBWERKE VORMALS MEISTER LUCIUS & BRUNING.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930

FARBWERKE vormals MEISTER LUCIUS & BRUNING, DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm. ROESSLER, and BADISCHE-ANILIN & SODA-FABRIK,

Petitioners,

against

CHEMICAL FOUNDATION, INC.; E. I. duPONT deNEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,

Respondents.

No. 179

FARBWERKE vormals MEISTER LUCIUS & BRUNING,

Petitioner,

against

E. I. duPONT deNEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,

Respondents.

No. 180

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm. ROESSLER,

Petitioner,

against

E. I. duPONT deNEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,

Respondents.

No. 181

BADISCHE-ANILIN & SODA-FABRIK,

Petitioner,

against

E. I. duPONT deNEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,

Respondents.

No. 182

BRIEF FOR PETITIONER FARBWERKE VORMALS MEISTER LUCIUS & BRUNING.

OPINIONS BELOW.

The opinion of the District Court (R. 136) is reported in 29 F. (2d) 597. The opinion of the Circuit Court of Appeals (R. 181) is reported in 39 F. (2d) 366.

JURISDICTION.

The jurisdiction of this Court is invoked under Section 240 (*a*) of the Judicial Code as amended by the Act of February 13, 1925 (28 USCA § 347 (*a*)). The decrees of the Circuit Court of Appeals for the Third Circuit were entered on March 4, 1930 (R. 195, 196, 197) and the Petition for Certiorari filed June 4, 1930 and granted by orders entered October 13, 1930 (R. 201, 202).

THE QUESTION PRESENTED.

May the Petitioners, the former enemy owners of patents (hereinafter collectively called the German owners) seized under the Trading with the Enemy Act (40 Stat. 411), as amended, under instruments of seizure, which did not in express terms seize the royalties accrued under wartime licenses granted by authority of the President pursuant to the provisions of said Act, which patents were subsequently sold by the Alien Property Custodian pursuant to the provisions of said Act and the amendments thereof, recover such accrued royalties either under said Act, as originally enacted, or under the amendment thereof made by the Settlement of War Claims Act of March 28, 1928 (45 Stat. 277), in suits brought within the time specified in said Act?

THE STATUTES.

The pertinent provisions of the Trading with the Enemy Act (Act of Oct. 6, 1917, C. 106, 40 Stat. 411, 50 USCA Append. pp. 1?9-311), as enacted and as amended are as follows:

Section 7, subsection (*c*) as enacted October 6, 1917:

"If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian."

Section 7, subsection (*c*), as amended Nov. 4, 1918 (ch. 201, § 1, 40 Stat. 1020):

"If the President shall so require any money or other property including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade marks, choses in action, and rights and claims of every character and description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this Act.

"Any requirement made pursuant to this Act, or a duly certified copy thereof, may be filed, registered, or recorded in any office for the filing, registering, or recording of conveyances, transfers, or assignments of any such property or rights as may be covered by such requirement (including the proper office for filing, registering, or recording conveyances, transfers, or assignments of patents, copyrights, trade-marks, or any rights therein or any other rights); and if so filed, registered, or recorded shall impart the same notice and have the same force and effect as a duly executed conveyance, transfer, or assignment to the Alien Property Custodian so filed, registered, or recorded.

"Whenever any such property shall consist of shares of stock or other beneficial interest in any corporation, association, or company or trust, it shall be the duty of the corporation, association, or company or trustee or trustees issuing such shares or any certificates or other instruments representing the same or any other beneficial interest to cancel upon its, his, or their books all shares of stock or other beneficial interest standing upon its, his, or their books in the name of any person or persons, or held for, on account of, or on behalf of, or for the benefit of any person or persons who shall have been determined by the President, after investigation, to be an enemy or ally of enemy, and which shall have been required to be conveyed, transferred, assigned, or delivered to the Alien Property Custodian or seized by him, and in lieu thereof to issue certificates or other instruments for such shares or other beneficial interest to the Alien Property Custodian or otherwise, as the Alien Property Custodian shall require.

"The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of

this Act, and in the event of sale or other disposition of such property by the Alien Property Custodian, shall be limited to and enforced against the net proceeds received therefrom and held by the Alien Property Custodian or by the Treasurer of the United States."

Section 10, subsections (*c*), (*d*), (*e*) and (*f*) as enacted October 6, 1917:

"(*c*) Any citizen of the United States or any corporation organized within the United States desiring to manufacture, or cause to be manufactured, a machine, manufacture, composition of matter, or design, or to carry on, or to use any trade-mark, print, label or cause to be carried on, a process under any patent or copyrighted matter owned or controlled by an enemy or ally of enemy at any time during the existence of a state of war may apply to the President for a license; and the President is hereby authorized to grant such a license, nonexclusive or exclusive as he shall deem best, provided he shall be of the opinion that such grant is for the public welfare, and that the applicant is able and intends in good faith to manufacture, or cause to be manufactured, the machine, manufacture, composition of matter, or design, or to carry on, or cause to be carried on, the process or to use the trade-mark, print, label or copyrighted matter. The President may prescribe the conditions of this license, including the fixing of prices of articles and products necessary to the health of the military and naval forces of the United States or the successful prosecution of the war, and the rules and regulations under which such license may be granted and the fee which shall be charged therefor, not exceeding $100, and not exceeding one per centum of the fund deposited as hereinafter provided. Such license shall be a complete defense to any suit at law or in equity instituted by the enemy or ally of enemy owners of the letters patent, trade-mark, print,

label or copyright, or otherwise, against the licensee for infringement or for damages, royalty, or other money award on account of anything done by the licensee under such license, except as provided in subsection (*f*) hereof:

"(*d*) The licensee shall file with the President a full statement of the extent of the use and enjoyment of the license, and of the prices received in such form and at such stated periods (at least annually) as the President may prescribe; and the licensee shall pay at such times as may be required to the alien property custodian not to exceed five per centum of the gross sums received by the licensee from the sale of said inventions or use of the trade-mark, print, label or copyrighted matter, or, if the President shall so order, five per centum of the value of the use of such inventions, trade-marks, prints, labels or copyrighted matter to the licensee as established by the President; and sums so paid shall be deposited by said alien property custodian forthwith in the Treasury of the United States as a trust fund for the said licensee and for the owner of the said patent, trade-mark, print, label or copyright registration as hereinafter provided, to be paid from the Treasury upon order of the court, as provided in subdivision (*f*) of this section, or upon the direction of the alien property custodian.

"(*e*) Unless surrendered or terminated as provided in this Act, any license granted hereunder shall continue during the term fixed in the license or in the absence of any such limitation during the term of the patent, trade-mark, print, label, or copyright registration under which it is granted. Upon violation by the licensee of any of the provisions of this Act, or of the conditions of the license, the President may, after due notice and hearing, cancel any license granted by him.

"(*f*) The owner of any patent, trade-mark, print, label, or copyright under which a license is granted hereunder may, after the end of the war and until the expira-

tion of one year thereafter, file a bill in equity against the licensee in the district court of the United States for the district in which the said licensee resides, or, if a corporation, in which it has its principal place of business (to which suit the Treasurer of the United States shall be made a party), for recovery from the said licensee for all use and enjoyment of the said patented invention, trade-mark, print, label or copyrighted matter; *Provided, however,* That whenever suit is brought, as above, notice shall be filed with the alien property custodian within thirty days after date of entry of suit: *Provided further,* That the licensee may make any and all defenses which would be available were no license granted. The court on due proceedings had may adjudge and decree to the said owner payment of a reasonable royalty. The amount of said judgment and decree, when final, shall be paid on order of the court to the owner of the patent from the fund deposited by the licensee, so far as such deposit will satisfy said judgment and decree; and the said payment shall be in full or partial satisfaction of said judgment and decree, as the facts may appear; and if, after payment of all such judgments and decrees, there shall remain any balance of said deposit, such balance shall be repaid to the licensee on order of the alien property custodian. If no suit is brought within one year after the end of the war, or no notice is filed as above required, then the licensee shall not be liable to make any further deposits, and all funds deposited by him shall be repaid to him on order of the alien property custodian. Upon entry of suit and notice filed as above required, or upon repayment of funds as above provided, the liability of the licensee to make further reports to the President shall cease.

"If suit is brought as above provided, the court may, at any time, terminate the license, and may, in such event, issue an injunction to restrain the licensee from infringement thereafter, or the court, in case the licensee, prior to suit, shall have made investment of capital based on

possession of the license, may continue the license for such period and upon such terms and with such royalties as it shall find to be just and reasonable."

The following paragraph was added to 10(*f*) by section 19 of Settlement of War Claims Act of 1928 (Act of March 10, 1928, ch. 167, sec. 19; 45 Stat. 277):

"In the case of any such patent, trade-mark, print, label, or copyright, conveyed, assigned, transferred, or delivered to the Alien Property Custodian or seized by him, any suit brought under this subsection, within the time limited therein, shall be considered as having been brought by the owner within the meaning of this subsection, in so far as such suit relates to royalties for the period prior to the sale by the Alien Property Custodian of such patent, trade-mark, print, label, or copyright, if brought either by the Alien Property Custodian or by the person who was the owner thereof immediately prior to the date such patent, trade-mark, print, label, or copyright was seized or otherwise acquired by the Alien Property Custodian.

Section 10(*g*) as enacted October 6, 1917:

"(*g*) Any enemy, or ally of enemy, may institute and prosecute suits in equity against any person other than a licensee under this Act to enjoin infringement of letters patent, trade-mark, print, label, and copyrights in the United States owned or controlled by said enemy or ally of enemy, in the same manner and to the extent that he would be entitled so to do if the United States was not at war: *Provided*, That no final judgment or decree shall be entered in favor of such enemy or ally of enemy by any court except after thirty days' notice to the alien property custodian. Such notice shall be in writing and shall be served in the same manner as civil process of Federal courts."

Section 12 as enacted October 6, 1917:

"All moneys (including checks and drafts payable on demand) paid to or received by the alien property custodian pursuant to this Act shall be deposited forthwith in the Treasury of the United States, and may be invested and reinvested by the Secretary of the Treasury in United States bonds or United States certificates of indebtedness, under such rules and regulations as the President shall prescribe for such deposit, investment, and sale of securities; and as soon after the end of the war as the President shall deem practicable, such securities shall be sold and the proceeds deposited in the Treasury.

"All other property of an enemy, or ally of enemy, conveyed, transferred, assigned, delivered, or paid to the alien property custodian hereunder shall be safely held and administered by him except as hereinafter provided; and the President is authorized to designate as a depositary, or depositaries, of property of an enemy or ally of enemy, any bank, or banks, or trust company, or trust companies, or other suitable depositary or depositaries, located and doing business in the United States. The alien property custodian may deposit with such designated depositary or depositaries, or with the Secretary of the Treasury, any stocks, bonds, notes, time drafts, time bills of exchange, or other securities, or property (except money or checks or drafts payable on demand which are required to be deposited with the Secretary of the Treasury) and such depositary or depositaries shall be authorized and empowered to collect any dividends or interest or income that may become due and any maturing obligations held for the account of such custodian. Any moneys collected on said account shall be paid and deposited forthwith by said depositary or by the alien property custodian into the Treasury of the United States as hereinbefore provided.

"The President shall require all such designated depositaries to execute and file bonds sufficient in his judgment to protect properly on deposit, such bonds to be conditioned as he may direct.

"The alien property custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which shall come into his possession in pursuance of the provisions of this Act, and, acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, may manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights which may be or become appurtenant thereto or to the ownership thereof, if and when necessary to prevent waste and protect such property and to the end that interests of the United States in such property and rights or of such person as may ultimately become entitled thereto, or to the proceeds thereof, may be preserved and safeguarded. It shall be the duty of every corporation incorporated within the United States and every unincorporated association, or company, or trustee, or trustees within the United States issuing shares or certificates representing beneficial interests to transfer such shares or certificates upon its, his or their books into the name of the alien property custodian upon demand, accompanied by the presentation of the certificates which represent such shares or beneficial interests. The alien property custodian shall forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such property, or rights so sold by him.*

"Any money or property required or authorized by the provisions of this Act to be paid, conveyed, trans-

*The foregoing paragraph was amended March 28, 1918. For text of the amendment see p. 11 *post*.

ferred, assigned, or delivered to the alien property custodian shall, if said custodian shall so direct by written order, be paid, conveyed, transferred, assigned, or delivered to the Treasurer of the United States with the same effect as if to the alien property custodian.

"After the end of the war any claim of any enemy or of an ally of enemy to any money or other property received and held by the alien property custodian or deposited in the United States Treasury, shall be settled as Congress shall direct: *Provided, however,* That on order of the President as set forth in section nine hereof, or of the court, as set forth in sections nine and ten hereof, the alien property custodian or the Treasurer of the United States, as the case may be, shall forthwith convey, transfer, assign, and pay to the person to whom the President shall so order, or in whose behalf the court shall enter final judgment or decree, any property of an enemy or ally of enemy held by said custodian or by said Treasurer, so far as may be necessary to comply with said order of the President or said final judgment or decree of the court: *And provided further,* That the Treasurer of the United States, on order of the alien property custodian shall, as provided in section ten hereof, repay to the licensee any funds deposited by said licensee."

Section 12, fourth paragraph,* as amended March 28, 1918 (ch. 28, § 1, 40 Stat. 460):

"The alien property custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which has been or shall be, or which has been or shall be required to be, conveyed, transferred, assigned, delivered, or paid over to him in pursuance of the provisions of this Act, and, in addition thereto, acting under the supervision and direction of the President, and under such rules and regulations as the

*For text of this paragraph as originally enacted see p. 10 *supra.*

President shall prescribe, shall have power to manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights or powers which may be or become appurtenant thereto or to the ownership thereof in like manner as though he were the absolute owner thereof: *Provided,* That any property sold under this Act, except when sold to the United States, shall be sold only to American citizens, at public sale to the highest bidder, after public advertisement of time and place of sale which shall be where the property or a major portion thereof is situated, unless the President stating the reasons therefor, in the public interest shall otherwise determine: *Provided further,* That when sold at public sale, the alien property custodian upon the order of the President stating the reasons therefor, shall have the right to reject all bids and resell such property at public sale or otherwise as the President may direct. Any person purchasing property from the alien property custodian for an undisclosed principal, or for re-sale to a person not a citizen of the United States, or for the benefit of a person not a citizen of the United States, shall be guilty of a misdemeanor, and, upon conviction, shall be subject to a fine of not more than $10,000, or imprisonment for not more than ten years, or both, and the property shall be forfeited to the United States. It shall be the duty of every corporation incorporated within the United States and every unincorporated association, or company, or trustee, or trustees within the United States issuing shares or certificates representing beneficial interests to transfer such shares or certificates upon its, his or their books into the name of the alien property custodian upon demand, accompanied by the presentation of the certificates which represent such shares or beneficial interests. The alien property custodian shall forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such proprty or rights so sold by him."

STATEMENT.

At the outbreak of the War petitioners, citizens of Germany, were severally the owners of certain United States letters patent (R. 69-70, 130-1).

Trading with the Enemy Act (Sec. 10(*c*), *supra*, pp. 5-6) authorized the granting of licenses for the use of enemy-owned United States letters patent and the payment of reasonable royalties for such use, to be fixed as provided in the Act and to be recoverable by the owners of such patents upon the filing of bills in equity after the end of the War and until the expiration of one year thereafter (Sec. 10(*f*), *supra*, pp. 6-8). The power to grant such licenses was delegated by the President to the Federal Trade Commission (R. 70-1, 131-2). Pursuant to such authority, respondent E. I. duPont deNemours & Co. (hereinafter referred to as duPont) was licensed under Federal Trade Commission License No. 19 to use said patents (R. 27-34, 70-1, 131-2). The patents were subsequently seized by the Alien Property Custodian (R. 71-2, 132-3) and thereafter sold and assigned to respondent Chemical Foundation, Inc., on April 10, 1919 (R. 73, 134). Neither the instruments of seizure (R. 75-81) nor the assignment (R. 81-85) expressly covered the accrued royalties.

Within a year after the termination of the War, the German owners, severally, brought suits against duPont to recover reasonable royalties pursuant to Section 10(*f*) of the Trading with the Enemy Act (R. 135-6). Within the same period Chemical Foundation brought suit

against duPont for the recovery of reasonable royalties for the use of the same patents from the date of the assignment of the patents by the Alien Property Custodian to it, namely, April 10, 1919, to the date when the license was cancelled (R. 11, 74).

By its bill of complaint and by stipulation (R. 11, 75) Chemical Foundation makes no claim for royalties which had accrued prior to the assignment of the patents to it. The German owners, as correctly stated by the court below (R. 186), expressly limited the relief sought by them to such royalties as had accrued prior to such assignment. The three suits of the German owners and that of the Chemical Foundation, Inc. were consolidated for trial (R. 44-5).

By Section 19 of the Settlement of War Claims Act of 1928 (Act of March 10, 1928, ch. 167, Sec. 19; 45 Stat. 277), Section 10(*f*) of Trading with the Enemy Act was amended by the addition of a paragraph (*supra*, p. 8) in which it was provided that in the case of any patent seized by the Alien Property Custodian:

> "* * * any suit brought under this subsection (10f) within the time limited therein, shall be considered as having been brought by the owner within the meaning of this subsection, in so far as such suit relates to royalties for the period prior to the sale by the Alien Property Custodian of such patent, * * * if brought either by the Alien Property Custodian or by the person who was the owner thereof immediately prior to the date such patent, trade-mark, print, label or copyright was seized or otherwise acquired by the Alien Property Custodian."

The District Court following the decision of the Circuit Court of Appeals for the Third Circuit in *Hicks* v. *Anchor Packing Co.*, 16 F. (2d) 723, held that the German owners although the owners of the patent within the meaning of Section 10(*f*) of Trading with the Enemy Act, as originally enacted, could not, by reason of the subsequent seizure and sale of their patents, maintain suits for the recovery of royalties during the period of their ownership, that the amendment of such section by Settlement of War Claims Act was unconstitutional, and dismissed the bills of the German owners (R. 136-148, 152-5). In the Chemical Foundation suit, consolidated for trial with the suits of German owners, the decree entered by the District Court declared Chemical Foundation to be the owner of the royalties, which had accrued prior to the seizure and sale of said patents, as well as thereafter (R. 149-51), although, in its bill of complaint, it had asserted no such right and although no issue in respect thereof was joined in said case between the German owners and the Chemical Foundation.

On appeal the Circuit Court of Appeals affirmed holding (1) that the theretofore accrued royalties as well as the patents themselves were seized by the Alien Property Custodian, (2) that the German owners were not the owners of the patents within the meaning of the Act, and (3) that the amendment of 1928, if applied to these cases, was unconstitutional (R. 181-195).

SPECIFICATION OF ERRORS TO BE URGED.

The Circuit Court of Appeals erred

1. In holding that the accrued royalties were seized.

2. In holding that only such persons who were the owners of patents at the time of the institution of suits, could bring such suits for the recovery of accrued royalties under Trading with the Enemy Act.

3. In holding that the amendment of Section 10(*f*) of Trading with the Enemy Act by Section 19 of Settlement of War Claims Act of 1928 was, as applied to the facts of this case, unconstitutional.

4. In affirming the decree of the District Court dismissing the petitioners' several bills and in affirming so much of the decree in the Chemical Foundation suit as found it to be the owner of the accrued royalties.

ARGUMENT.

I. The accrued royalties were neither seized nor sold.

The patents were seized under subsection (*c*) of Section 7 as amended November 4, 1918 (again reproduced for convenience), which provided:

> "If the President shall so require any money or other property including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade marks, choses in action, and rights and claims of every character and description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this Act.
>
> "Any requirement made pursuant to this Act, or a duly certified copy thereof, may be filed, registered, or recorded in any office for the filing, registering, or recording of conveyances, transfers, or assignments of any such property or rights as may be covered by such requirement (including the proper office for filing, registering, or recording conveyances, transfers, or assignments of patents, copyrights, trade-marks, or any rights therein or any other rights); and if so filed, registered, or recorded *shall impart the same no-*

> *tice and have the same force and effect as a duly executed conveyance, transfer, or assignment* to the Alien Property Custodian so filed, registered, or recorded."

Congress thus intended that the seizure should be evidenced by a "requirement" or written instrument, which, in the case of patents, should "have the same force and effect as a duly executed . . . assignment . . ." The President delegated the power conferred to the Alien Property Custodian, by whom the patents were seized. The "requirement" or instrument of seizure in respect of each* covered

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*The instrument of seizure in respect of Patent No. 868,294, owned by the petitioner, in whose behalf this brief is filed, dated and recorded March 26, 1919 (R. 79-80), was in the following form, the two other instruments by which the patents of the other petitioners were seized being substantially similar (R. 75-79):

DEMAND FORM (3)

Trust No. 12079
Report No. 38124

PATENT OWNED BY ENEMY SUBJECT TO THE RIGHTS OF OTHERS.

E. I. Du Pont de Nemours & Company,
Wilmington, Delaware

H. A. Metz Laboratories, Inc.,
New York, N. Y.

To The Commissioner of Patents,
Washington, D. C.

To All to Whom These Presents May Come:

I, FRANCIS P. GARVAN, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading With the Enemy Act," approved October 6, 1917, and the amendments thereto and the executive orders and proclamations issued in pursuance thereof, under and by virtue of the authority vested in me as Alien Property Custodian, after investigation, do determine that

"said letters patent and every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof."

Farbwerke vorm. Meister, Lucius & Bruning,
Hochst-on-the-Main, Germany

is an enemy not holding a license granted by the President within the purview of said Act as amended and said orders and proclamations; and I do further, after investigation, determine that certain letters patent of the United States, identified as follows:

Patent No.	*Date of Issue*	*Title*
868,294	Oct. 15, 1907	Process of producing Phenyglycin and its homologues

and every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof, subject to the rights of

E. I. Du Pont de Nemours & Company
Wilmington, Delaware

belongs to, or is held for, or on account of, or on behalf of, or for the benefit of said enemy,

Farbwerke vorm. Meister, Lucius & Bruning,
Hochst-on-the-Main, Germany

As such Alien Property Custodian I do seize said letters patent and every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof, subject to the rights of

E. I. Du Pont de Nemours & Company
Wilmington, Delaware

and I hereby require that you convey, transfer, assign and deliver the same to me, to be by me, as Alien Property Custodian, held, administered and accounted for as provided by law.

I, as Alien Property Custodian, do request that the Commissioner of Patents record this requirement upon the books and records kept by him, to show the assignment and transfer of letters patent, in respect to said letters patent above mentioned.

It is well settled that the assignment of a patent and of "every right, title and interest with respect thereto" does not operate to transfer to the assignee either accrued royalties or the right to recover past damages or profits for infringement, but that the same must be expressly

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This demand is supplementary to any and all requirements and demands heretofore made with respect to said property and is in addition to and without prejudice to such requirements and demands, and shall in no way affect the interests, rights and powers acquired by me as Alien Property Custodian by virtue of such previous requirements and demands.

Witness my hand and seal of office this 22nd day of March, 1919.

FRANCIS P. GARVAN
Alien Property Custodian.

Service of the foregoing demand is hereby acknowledged, this 26th day of March, 1919.

R. F. WHITEHEAD
Acting Commissioner of Patents 485.

Recorded March 26, 1919.

2-392

DEPARTMENT OF THE INTERIOR
UNITED STATES PATENT OFFICE

Received and Recorded on the 26th day of March, 1919 in Liber Z 106, page 301 of Transfers of Patents.

IN TESTIMONY WHEREOF, I have caused the seal of the Patent Office to be hereunto affixed.

JAMES T. NEWTON
Commissioner of Patents

Exd
LLW
6-1697

The instruments of seizure in respect of the other patents belonging to the other petitioners, dated and recorded February 21, 1919 and March 26, 1919, respectively (R. 75-79), were identical in form except that the instrument recorded February 21, 1919 did not include the words "subject to the rights of E. I. Du Pont de Nemours & Company, Wilmington, Delaware".

assigned. *Moore* v. *Marsh*, 7 Wall. 515, 522; *United States* v. *Loughrey*, 172 U. S. 206, 211, 212; *Crown Die & Tool Co.* v. *Nye Tool & Machine Works*, 261 U. S. 24; *Superior Drill Co.* v. *Nye Mfg. Co.*, 98 Fed. 734; *Canda Bros.* v. *Michigan Malleable Iron Co.*, 152 Fed. 178; *Johnston* v. *Southern Well Works*, 208 Fed. 145; *Dibble* v. *Augur*, 7 Blatch. 86 (91), Fed. Cas. No. 3,879; *May* v. *Juneau*, 30 Fed. 241; *Kaolatype Engraving Co.* v. *Hoke*, 30 Fed. 444; *Emerson* v. *Hubbard*, 34 Fed. 327; *Jones* v. *Berger*, 58 Fed. 1,006; *Leadam* v. *Ringgold Co.*, 140 Fed. 611; *Herman* v. *Detroit Shipbuilding Co.*, 295 Fed. 423, 424.

Construed according to the law governing assignment of patents, the accrued royalties were excluded from the instrument of seizure, and the right to recover damages and profits for infringements were included only because specifically mentioned. This the court below recognized (R. 189-90) but held that such royalties were nevertheless seized because it was said that the court was dealing not with a voluntary assignment but with "an act of capture".

In so holding, it is respectfully submitted that the court misinterpreted both the statute, under which the patents were seized, and the instrument of seizure itself. The second paragraph of the statute (*supra* p. 4) expressly provides that the instrument of seizure, referred to therein as a "requirement", shall in the case of patents (which are expressly included in the first paragraph as among the classes of property subject to seizure) "have the same force and effect as a duly executed * * * assignment" thereof. Congress thus clearly intended, if it did not expressly declare, that the force

and effect of such instrument should be determined by the law governing the assignment of patents. In holding that it should be otherwise construed, the court below disregarded the plain intent of Congress. The Act did not require the Alien Property Custodian to seize all of the property of an enemy owner but authorized the Custodian to qualify or limit the seizure in such manner and to such extent as he might in any case see fit. *Sutherland* v. *Guaranty Trust Company of New York,* 11 F. (2d) 696, 698 (2d C. C. A.). The extent of the seizure must be determined by the words of the instrument of seizure construed in the light of the law governing assignments of patents. Otherwise, the instrument of seizure does not have the same force and effect as an assignment, but a force and effect different therefrom.

Moreover, the express inclusion of damages and profits for past infringement, which under the law governing the interpretation of assignments would not otherwise have been included, and the exclusion of any reference to the accrued royalties is clearly indicative of an intent to exclude the latter. If, as asserted by the court below, the words "every right, title and interest with respect thereto" were effective to seize the accrued royalties, they were equally effective to seize the right to recover damages and profits for past infringement and no specific mention thereof was required. The instrument of seizure was evidently carefully drawn by a draughtsman familiar with the law governing the assignment of patents, and in conformity therewith. The very statute, under which the patents were seized, reserved to the enemy owner the right to the payment of reasonable royalties for their use under licenses granted by authority

of the President (Section 10(*f*), p. 6 *supra*), by implication reserved to the enemy owner the right to recover damages and profits for past infringement (Section 10(*c*), pp. 5-6, *supra*) and expressly reserved in such enemy owner the right to institute and prosecute suits in equity "against any person other than a licensee * * * to enjoin infringement * * * in the same manner and to the same extent that he would be entitled to do if the United States was not at war" (Section 10(*g*), p. 8, *supra*). The seizure was of necessity made with full knowledge, that, except as affected by the scope of the instrument of seizure, the rights thus existing in the enemy owner would continue. Such instrument was obviously drawn on the correct hypothesis that the reserved right to enjoin infringement, *during the war*, was cut off by the seizure of the patent itself, but that the right to recover either profits or damages for past infringement, or the royalties already accrued under presidential licenses (the latter to be exercised only in suits to be brought *after* the termination of the war) would continue in the enemy owner unless seized along with the patent. Hence the express seizure of the former. If it had been intended to cover the accrued royalties as well as such damages and profits, specific mention of both would have been made.

Moreover, the instrument by which the patent belonging to the petitioner, in whose behalf this brief is filed, (footnote, pp. 18 and 19, *supra*) was expressly subject to the rights of duPont as licensee thereof under a presidential license. That is to say, the instrument of seizure discloses on its face actual knowledge of the existence of such license and hence of the existence of the right to

recover the royalties already accrued thereon in suits to be brought after the termination of the war. The express seizure of damages and profits for past infringement, and the omission expressly to seize accrued royalties under such license is thus all the more significant. Under the rule of *expressio unius, exclusio alterius,* the instrument of seizure on its face clearly excluded the accrued royalties.

Aside from its reference to the act of seizure as one of capture, the only reason assigned by the court below for its decision is that "the words 'every right, title and interest with respect to' the patents" on their face would include royalties which are said to be "a very real 'interest' in or in respect to a patent". But the same observation might have been made in respect of the cases cited above, construing assignments, and was no less applicable to "damages and profits for past infringement", which were expressly seized.

In *Crown Die & Tool Co.* v. *Nye Tool & Machine Works, supra,* the decision of Judge Blatchford in *Dibble* v. *Augur, supra,* is cited with approval, the opinion also commenting on the fact that Judge Blatchford "subsequently became a justice of this Court and had great experience in the administration of the patent law." The *Dibble* case may, therefore, be regarded as one of the leading cases on the subject. In that case, Judge Blatchford said:

> "* * * In conveying all of Robertson's *'right, title, interest, claim or demand whatsoever, in, to or under'* the patent, it conveys only the right to claims for infringements which should be committed after such assignment. (*Moore* v. *Marsh,*

> 7 Wall. 515.) The words *'claim or demand whatsoever, in, to or under'* the patent, are not sufficient to cover claims for past infringements. * * *" (pp. 90-91).

The words all "right, title, interest, claim or demand in, to, or under a patent" construed in the foregoing case are clearly as all embracing as the words "every right, title and interest with respect to" a patent. That the right to recover for past damages or for royalties does not inhere in the patent itself, likewise appears from the opinion of the late Chief Justice in *Superior Drill Co.* v. *Nye Mfg. Co., supra,* in which it is said:

> "* * * Claims for damages for past trespasses [in respect of a patent] do not pass by any conveyance of the thing trespassed upon. They are mere choses in action, independent of the thing injured, which pass to the administratrix as such, and which must be specifically assigned if they are to pass with the patent."

Accrued royalties are even more independent of the patent, itself. A suit for the recovery of royalties is not a suit arising under the patent laws over which the Federal courts have exclusive jurisdiction, but one for the enforcement of contract rights in which the sole jurisdiction is in the state courts, except where Federal jurisdiction may be invoked on the ground of diverse citizenship. *Crown Company* v. *Nye Tool Works, supra, Albright* v. *Teas,* 106 U. S. 613; *Pratt* v. *Paris Gas Light & Coke Co.,* 168 U. S. 255. It is true, that the power to exact royalties in the first instance grows out of the patent, but

the royalties themselves do not arise thereunder but out of the license under which they accrue. In this case no voluntary agreement was entered into between the German owners and the licensee. The Government under its war power, however, had the undoubted power to grant such licenses, which when granted had the same force and effect as a contract between the German owners and the licensee. *Koppel Industrial Car & Equipment Co.* v. *Orenstein & Koppel et al.*, 289 Fed. 446, 451 (2nd C. C. A.).

The District Court was apparently of the opinion (R. 142) that, although the statute in terms provided for the granting of licenses and the payment of royalties, the licensee was in reality an infringer, and that hence the royalties were in fact damages for infringement, the right to recover which was seized. The Circuit Court of Appeals did not adopt this view, which is clearly erroneous. The statute itself expressly and carefully distinguishes between licensees and infringers. Section 10(*c*), *supra*, expressly grants to licensees under the statute immunity from suits for infringement while section 10(*g*), *supra*, as expressly authorizes the institution of suits by enemy owners against infringers. A person may not at the same time be a licensee and an infringer. In the exercise of the war powers Congress had full power to seize and dispose of enemy property. *United States* v. *Chemical Foundation*, 272 U. S. 1. This being so, it obviously had the power to authorize the granting of licenses without seizing the patent itself, and to confer upon the licensees the immunities from infringement which attach under a license. The greater power obviously includes the lesser. Congress, by carefully chosen phraseology,

sought to create the status of licensor and licensee of enemy owned patents, in order to provide for the lawful use of such patents in the prosecution of the War. Neither may it be doubted that Congress possessed this power.

Since the royalties accruing prior to seizure were never seized, they could not have been sold to the Chemical Foundation. Nor were they included within the subsequent assignment of the patents to it by the Alien Property Custodian, the language of which is substantially similar to that contained in the instrument of seizure and was likewise in express terms confined to the interest "acquired" by the Alien Property Custodian (R. 81).

That Congress did not intend that the seizure of a patent and of every right with respect thereto should, without more, operate to seize royalties accrued prior to the seizure, is further evidenced by the amendment of 1928, confirming the right of former enemy owners of seized patents to recover "royalties for the period prior to the sale" of such patents by the Alien Property Custodian. This amendment was passed as part of a comprehensive settlement of the claims growing out of the War as embodied in the Settlement of War Claims Act. It is to be noted that this amendment operates only in respect of royalties accruing prior to the sale of patents both seized and sold. If the mere seizure of the patent (without more) effected a seizure of the royalties as well, the amendment is rendered entirely nugatory, unless its effect was to divest the purchasers of such royalties from the Alien Property Custodian of the rights so acquired. The Settlement of War Claims Act and the Trading with the Enemy Act are not only statutes in *pari materia* and thus to be construed together, but the amend-

ment of the latter by the former may be properly regarded as a legislative interpretation thereof. This legislative interpretation, while not binding upon this Court, is entitled to great weight. *Cope* v. *Cope*, 137 U. S. 682, *United States* v. *Stafoff*, 260 U. S. 477, *United States* v. *Morton*, 65 Fed. 204, *Board of Commissioners* v. *Alexander*, 58 Okla. 128.

In *Cope* v. *Cope*, 137 U. S. 682, 688, Mr. Justice Brown said:

> "These several acts of Congress, dealing as they do with the same subject matter, should be construed not only as expressing the intention of Congress at the dates the several acts were passed, but the later acts should also be regarded as legislative interpretations of the prior ones."

By the passage of this amendment Congress in effect declared that it had not intended by the provisions for seizure and sale that a seizure of the patent (without more) should operate to seize the accrued royalties under presidential licenses. Knowledge of the precise words used in any instrument of seizure may not, of course, be imputed to Congress. The authority to seize, however, as originally conferred, was accompanied by a provision that such seizure should be evidenced by a written "requirement" and that in the case of patents the requirement should have the force and effect of an assignment. In *Hicks* v. *Anchor Packing Company*, 16 Fed. (2d) 723 the right of the former enemy owner to recover royalties after seizure of the patent was drawn in question. That case ended in the court below, no petition for writ of *certiorari* having been presented to

this court, and thus, while inconclusive cast doubt upon the meaning of the act. The Amendment of 1928, therefore, may properly be regarded as declaratory of the intent of Congress that the provisions governing seizure should be construed, as we think they are required to be on their face, viz., as making the extent of the seizure dependent upon the words of the instrument of seizure, construed, as in the case of the assignment of patents, and hence declaratory of the right of the former enemy owner to maintain suits for the recovery of royalties prior to their seizure and sale, unless expressly seized and sold. So interpreted, the Amendment of 1928 is consistent with the Act in its original form and is constitutional, while otherwise it must be construed as an attempt to divest the purchasers of such royalties of their right thereto, thus giving rise to a serious constitutional question.

II. Petitioners were the owners of the patents within the meaning of that part of Trading with the Enemy Act defining by whom and when suit should be brought.

The owner of the patent upon whom the right to recover royalties was conferred by the Act (10(*f*), pp. 6-8 *supra*), as originally enacted, concededly meant the enemy owner. The court below, following its own prior decision in *Hicks* v. *Anchor Packing Co., supra,* held that the subsequent amendment of section 7 (p. 3 *supra*), permitting seizure, limited such right of recovery to the owner of the patent at the time of the institution of the suit and applied the same rule in the instant case. In this the court below erred. The amendment in question

did not in express terms take away from a former enemy owner the right concededly conferred by the original act to recover the royalties accruing during his period of ownership. Its effect should not be extended beyond that necessary to give full force and effect to the seizure itself. The law governing patents and patent rights recognizes the right of successive owners to recover royalties or damages accruing during their respective periods of ownership and makes such rights dependent not upon ownership of the patent at the time of suit but ownership of the patent at the time of infringement or accrual of the royalties (cases *supra*). The more rational interpretation of the statute in question and the only one consistent with the patent law is that the right to sue for royalties at any time within a year after the end of the war was a right to be successively exercised by successive owners of the patent at the time that the royalties accrued.

If the patents had never been seized it may not be doubted that the enemy owners might, at any time, have assigned their patents to anyone not a citizen of the United States, if not to such a citizen, whether the assignments could be recorded before the termination of the war or not. In such a case it may not be doubted that both the assignor and assignee could maintain suits under this statute for recovery of reasonable royalties under presidential licenses for the periods represented by their respective ownerships of the patent and that each would have been an owner within the meaning of the statute. If the former owner, under such circumstances, could have maintained a suit for the royalties accruing during his period of ownership, although he had parted with the ownership of the patent by voluntary assignment, he may

maintain such a suit although he has involuntarily parted with such ownership by seizure and sale. If the accrued royalties were never seized, to confine the meaning of the word "owner" in the statute to the owner of the patent at the time suit is brought, instead of construing it to mean the owner of the patent at the time the royalties accrued, is to permit the licensee to use the patent free of royalties up to the time of seizure, since it will hardly be contended that the subsequent purchaser of the patent, although not the owner of the accrued royalties, may sue for and recover them. Such a construction is wholly inconsistent with the purpose of the statute and leads to unjust and incongruous results. Such an interpretation should always be avoided. *Kohlsaat* v. *Murphy*, 96 U. S. 153, 160; *United States* v. *Kirby*, 7 Wall. 482; *Hawaii* v. *Mankichi*, 190 U. S. 197.

In *Kohlsaat* v. *Murphy, supra*, this Court said (p. 160) that such results (meaning discrimination, injustice, etc.):

> "should never be imputed to the legislature except when the language employed will admit of no other signification."

There is no such language in this statute.

In *Hawaii* v. *Mankichi, supra*, this Court said (p. 214):

> "Two recent English cases are instructive in this connection: In *Plumstead Board of Works* v. *Spackman*, L. R., 13 Q. B. D. 878, 887, it was said by the Master of Rolls, afterwards Lord Esher: 'If there are no means of avoiding such an interpretation of the statute' (as will amount to a

> great hardship,) 'a judge must come to the conclusion that the legislature by inadvertence has committed an act of legislative injustice; but to my mind a judge ought to struggle with all the intellect that he has, and with all the vigor of mind that he has, against such an interpretation of an act of Parliament; and, unless he is forced to come to a contrary conclusion, he ought to assume that it is impossible that the legislature could have so intended.' See also *Ex parte Walton*, L. R. 17 Ch. D. 746."

In determining the meaning of the word "owner", as used in the Act, consideration should also be given to the amendment thereof by the Settlement of War Claims Act. As stated, the decision of the court below in the *Hicks* case cast doubt upon who was meant by the word "owner" in the Act, as amended by provision for seizure and sale. By this Act Congress obviously intended not to create a new right, or to restore an old one, but to declare that the word "owner" as originally intended, meant the owner at the time the royalties accrued despite subsequent seizure and sale. The amendment was a legislative declaration of the purpose of the statute as it then stood. This legislative interpretation is entitled to great weight. *Cope* v. *Cope, supra; U. S.* v. *Stafoff, supra; U. S.* v. *Morton, supra; Board of Commissioners* v. *Alexander, supra.* It was enacted as a part of the Settlement of War Claims Act, having for its purpose a comprehensive settlement of the various claims of the several governments and their nationals against each other. As a part of such settlement it undertook to make plain the rights of enemy owers to recover royal-

ties, which had accrued prior to seizure of their patents, provided suits therefor had been instituted within a year after the termination of the war in accordance with the provisions of the Trading with the Enemy Act as originally enacted. This intent should not be lightly disregarded. It is believed that the interpretation placed by the court below, upon the original act, as amended by the provision permitting seizure, is plainly erroneous. But, if the matter be involved in doubt that doubt should be resolved in favor of the subsequent interpretation placed upon the act by Congress itself.

III. The Amendment of 1928 was constitutional.

If, as we insist, the accrued royalties were never seized and the right of the former enemy owner to recover the same, as originally conferred, continued after seizure, the Amendment of 1928, being merely declaratory of previous enactments is not unconstitutional. The ruling of the courts below to the contrary proceeds upon the false premise that, although the Act originally conferred upon the enemy owner the right to recover royalties accruing during his period of ownership, he ceased to be the owner within the meaning of that part of the statute specifying by whom and within what period suits should be brought, when the statute was amended so to authorize a seizure of the patents.

Assuming the correctness of the premise, the conclusion does not follow. As distinguished from *William Danzer Co.* v. *Gulf R. R.*, 268 U. S. 633, cited by respondent duPont in its brief in opposition to certiorari, these suits had already been begun at the time of the

passage of the Act on the supposed authority of the statute. The effect of the amendment was, therefore, not to permit a plaintiff, who had allowed the bar of the statute to run, thereafter to bring a suit, but to cure a defect in no wise attributable to the plaintiff in suits already instituted. It is one of that class of cases in which curative statutes passed for the purpose of curing such defects in pending litigation have been sustained. *Danforth* v. *Groton Water Co.*, 178 Mass. 472; *Dunbar* v. *Boston & Providence RR.*, 181 Mass. 383; *Robinson* v. *Robins Dry Dock & Repair Co.*, 238 N. Y. 271.

In *Forbes Boat Line* v. *Board of Commissioners*, 258 U. S. 338, this Court, speaking through Mr. Justice Holmes, cited with approval the doctrine of *Danforth* v. *Groton Water Co., supra*, and *Dunbar* v. *Boston & Providence R. R. Co., supra*, decided by him while Chief Justice of the Supreme Judicial Court of Massachusetts, saying:

> "It is true also that when rights are asserted on the ground of some slight technical defect or contrary to some strongly prevailing view of justice, Courts have allowed them to be defeated by subsequent legislation and have used various circumlocutions, some of which are collected in *Danforth* v. *Groton Water Co.*, 178 Mass. 472, 477; *Dunbar* v. *Boston & Providence R. R. Co.*, 181 Mass. 383, 385. In those cases it is suggested that the meaning simply is that constitutional principles must leave some play to the joints of the machine."

The case is also quite similar to *Ewell* v. *Daggs*, 108 U. S. 143, and *West Side Ore Co.* v. *Pittsburgh Con-*

struction Co., 219 U. S. 92. In the former a statute of Texas provided that obligations for the payment of money, providing for a greater rate of interest than 12%, should be void and of no effect so far as recovery of interest was concerned. The defendant borrowed money from the plaintiff at a greater rate than that allowed by the statute. Subsequently the usury statute was repealed. In holding that the plaintiff was not deprived of a vested right by the repeal of the statute the Court said:

> "Independent of the nature of the forfeiture as a penalty, which is taken away by a repeal of the act, the more general and deeper principle on which they are to be supported is, that the right of a defendant to avoid his contract is given to him by statute, for purposes of its own, and not because it affects the merits of his obligation; and that whatever the statute gives, under such circumstances, as long as it remains *in fieri*, and not realized by having passed into a completed transaction, may, by a subsequent statute, be taken away. It is a privilege that belongs to the remedy, and forms no element in the rights that inhere in the contract. The benefit which he has received as the consideration of the contract, which, contrary to law, he actually made, is just ground for imposing upon him, by subsequent legislation, the liability which he intended to incur. That principle has been repeatedly announced and acted upon by this court. *Read* v. *Plattsmouth*, 107 U. S. 568; and see *Lewis* v. *McElvain*, 16 Ohio 347; *Johnson* v. *Bentley*, *Ib.* 97; *Trustees* v. *McCaughy*, 2 Ohio State 152; *Satterlee* v. *Mathewson*, 16 S. & R.

169; S. C. in error; 2 Pet. 380; *Watson* v. *Mercer*, 8 Pet. 88.

"The right which the curative or repealing act takes away in such a case is the right in the party to avoid his contract, a naked legal right which it is usually unjust to insist upon, and which no constitutional provision was ever designed to protect. *Cooley Constitutional Limitations*, 378, and cases cited."

So in this case duPont assumed an obligation to pay reasonable royalties for the use of the patent under the license voluntarily taken by it and may not be heard to complain if it is held to such obligation by a statute remedying a defect in previously existing statutes on account whereof the former enemy owner had been left without a remedy for the enforcement of such obligation.

In *West Side Ore Co.* v. *Pittsburgh Construction Co., supra*, the plaintiff was a foreign corporation which was not qualified to do business within the State. Under the statute contracts made by such a corporation were voidable. The corporation sued on a contract and the Court held it could not recover thereon. The legislature passed an Act validating such contract. The Supreme Court held the statute constitutional, quoting from *Ewell* v. *Daggs, supra*, a portion of the language hereinbefore set forth.

Moreover, the Settlement of War Claims Act was as much an exercise of the war power as were the statutes passed during the war itself. It had for its purpose the settlement of claims growing out of the war. In *Miller* v. *United States*, 11 Wall. 268, 304, this Court declared that the war powers of the govern-

ment were not affected by the restrictions of the Fifth and Sixth Amendments. This broad statement has since been qualified, *Hamilton* v. *Kentucky Distilleries Company*, 251 U. S. 146, 156, but it may not be doubted that an act, which would be void under the Fifth Amendment, if not referable to the war power, may be sustained, if referable thereto, *Highland* v. *Russell Car & Snow Plow Co.*, 279 U. S. 253. That case involved the constitutionality of the Lever Act as a price fixing statute. Except as an exercise of the war power, such an act of Congress would have clearly violated the Fifth Amendment. Its validity however, as an exercise of the war power was sustained. The rule appears to be that the Fifth Amendment imposes no greater limitation upon the war power than does the Fourteenth Amendment upon the police power of the states, *Hamilton* v. *Kentucky Distilleries Co., supra.* The usual test of the application of the Fourteenth Amendment to the police power is whether the Act in question is arbitrary, or capricious, or involves an unwarranted and unreasonable interference with private rights, having no direct relation to the objects and purposes for which the police power may be exercised. The amendment of 1928 is subject to none of these infirmities. The effect of the decision of the court below is to permit the licensee under licenses granted under Trading with the Enemy Act to escape the payment of any royalties for the use of the patents in question prior to their seizure. By the acceptance of the license it became obligated to pay such royalties. Assuming that the effect of the amendments providing for seizure was to deprive enemy owners of the remedy theretofore afforded for the use of their patents under presidential licenses,

the amendment of 1928 confirming such rights in them, where suits had already been brought in accordance with the statute, is neither arbitrary, nor capricious, nor does it constitute an unreasonable and unwarranted interference with private property, or private rights.

In so far as the constitutional objection raised rests upon an assumed invasion of the property rights of the Chemical Foundation as assignee of the patents, the objection urged is not open to duPont the licensee. *Missouri Rate Cases*, 230 U. S. 474, 508; *Aetna Insurance Company* v. *Hyde*, 275 U. S. 440; *Dahnke-Walker Co.* v. *Bondurant*, 257 U. S. 282; *Heald* v. *District of Columbia*, 259 U. S. 114; *Straus* v. *Foxworth*, 231 U. S. 162. Nor were any rights of the Chemical Foundation involved. The royalties were never seized and were never sold to it. Were it otherwise, the Chemical Foundation in its suit asserted no rights to the accrued royalties. Its bill of complaint sought only a recovery of the royalties accruing after the sale to it. No issue was joined between it and petitioner and it was error to include in the decree in its case a finding that it was the owner of the accrued royalties.

Moreover, it is by no means plain that in the exercise of its war power, and as a part of the settlement made of claims growing out of the war, it would have been beyond the constitutional power of Congress to restore to enemy owners the right to royalties, which had accrued under licenses granted *in invitum* by the United States, whatever obligations the United States might be required to assume towards its former assignee of such royalties. It is unnecessary, however, to consider this question further. For the reasons hereinbefore stated, only by a

most strained construction of the original Act and of the instruments of seizure may the amendment of 1928 be interpreted as having had this effect.

IV. It is doubtful whether the right to seize the accrued royalties was ever conferred, a doubt which should be resolved against such authority if necessary to carry out the purpose of Congress to permit enemy owners to recover such royalties up to date of sale.

Under the Trading with the Enemy Act as originally enacted, the President was authorized to require "any money or other property owing or belonging to or held for, by, on account of or for the benefit of an enemy" to be conveyed to the Alien Property Custodian so that it could be brought under Government supervision and would not be employed in activities inimical to the interests of the Government in the prosecution of the war. Section 7(*c*), page 3, *supra*. By Section 12 page 10, *supra* the Alien Property Custodian was empowered only to hold and manage property so conveyed and could sell only to prevent waste. By an amendment to Section 12 of March 28, 1918 (pp. 11 and 12, *supra*) unrestricted power of sale was conferred and the foregoing limitation removed.

Section 7(*c*) was amended November 4, 1918, so as to permit the seizure of

> "any money or other property including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade marks, choses in action, and rights and claims of every character

and description owing or belonging to or held for, by, or on account of, or on behalf of, or for the benefit of an enemy * * *"

The foregoing language, literally construed, is broad enough to authorize the seizure of the right to the recovery of royalties under presidential licenses prior to the sale of patents seized. The right to the recovery of such royalties was an extraordinary right, totally dissimilar from ordinary choses in action, claims and demands. It was in effect a provision for the making of just compensation for the seizure of the use of the patents, as distinguished from the seizure of the patents themselves, and was made in harmony with the settled policy of this Government to make such compensation to enemy owners for the use of property seized, although not required by the Constitution so to do. Wherever necessary to give effect to the intent of Congress, the meaning of the words employed may be either enlarged or limited in disregard of their literal significance. *Holy Trinity Church* v. *United States,* 143 U. S. 457. In the brief in support of the petition for certiorari authority to seize this right was conceded. Further consideration of the general purposes of the provision in question and of its legislative history lead to the conclusion that it was not intended by this provision to authorize the seizure of this extraordinary right and that the words "choses in action" and "rights and claims of every character", etc., should be restricted in their application to ordinary rights of such description.

As stated by this Court, the purpose of this provision was "not only to weaken enemy countries by de-

priving their supporters of their properties—but also to promote production in the United States of things effective to the successful prosecution of the war." *United States* v. *Chemical Foundation, supra.* Seizure of this right was not necessary to the accomplishment of either of these general purposes. With the seizure of the patent, promotion of production in the United States of the articles covered thereby was fully accomplished, while the right to the recovery of such royalties, being postponed until the conclusion of the war, its seizure was unnecessary to weaken enemy countries.

That the seizure of this extraordinary right to just compensation was not within the purposes in mind at the time of the enactment of this provision seems to be evidenced by the legislative history of the amendment, which was enacted as a rider to the first Deficiency Appropriation Act of 1919 (Ch. 201, Section 1, 40 Stat. 1020). The amendment was not a part of the bill as it passed the House (H. R. 13086, 65th Congress, Second Session). On its receipt in the Senate the bill was referred to the Committee on Appropriations (56 Cong. Rec. Part II, p. 11403, 65th Congress, Second Session) and was added by that Committee as a result of hearings held before it. The amendment was presented to the Committee by Mr. Bradley, the General Counsel for the Alien Property Custodian, who explained its purpose. In so doing he stated that, while Congress had conferred an unrestricted power of sale on the Custodian by the Amendment to Section 12 passed in March, 1918, nevertheless legal opinion feared that patents might not be included in the enemy property which was subject to seizure and sale by the Alien Property Custodian owing to the specific treat-

ment given to patents, copyrights, trademarks and other similar species of property by Section 10 of the Act. He further stated that the Alien Property Custodian found that in the sale of a business it was indispensable to sell the patent with the business (U. S. Appropriations Committee (Senate) Hearings 65th Congress 1-2 Sess., 1917-1918 Miscellaneous; Hearings before the Sub-committee of the Committee on Appropriations, U. S. Senate, H. R. 13086, pp. 81-85). To use the words of Mr. Bradley, "the net result of the patent situation is that we can resell only the plant, and, therefore, only the instrument for infringing on the patent monopoly that must still reside in the German owner during the life of the patent." (Op. Cit. 85).

In speaking of the wording of Section 7(*c*) Mr. Bradley went on to say (Op. Cit. 85):

> "The other changes in the first paragraph 7-c, as amended, are comparatively speaking of minor importance. In addition to patents, we do add the express inclusion of choses in action, and rights and claims of every character and description. That expression is put there by way of excess caution, perhaps, to avoid the possible construction of any limitation on the meaning of the word "property", and also with the further specific thought in mind that it will enable us to reach this situation.
>
> "Just prior to the war, and particularly after the break in diplomatic relations, there were very many transactions by which property then owned by Germans was pretended to be sold to American citizens. The larger part of it was perhaps first incorporated, and then the stock was pretended to be sold; but in very many of those cases

we have also been able to locate strings in the way of options reserved, and the right to repurchase, say in 1920; and where they did sell outright without our being able to secure any evidence of retaking the property, they were cautious to make the purchase price payable about 1920, and in some cases boldly after the end of the war. We also add, in the latter part of this first paragraph, a provision authorizing the Alien Property Custodian to seize—of course, that is mere mechanical machinery—property where he is not able, for any reason, to serve a demand."

The following questions by Senator Underwood and answers by Mr. Bradley bring out clearly the purposes of the Amendment (*Op. cit.* 87-88):

"SENATOR UNDERWOOD: Mr. Bradley, let me ask you this question: The purpose of this amendment covers two general subject matters, *and only two.* One is handling the patent situation so that you can convey the title to the purchaser?

"MR. BRADLEY: Exactly.

"SENATOR UNDERWOOD: The other is largely a question of transfer of stock certificates?

"MR. BRADLEY: That is correct.

"SENATOR UNDERWOOD: And although Congress gave you, or attempted to give you, full power to dispose of enemy-owned property, when you come to investigate and handle the situation you find that the power does not reach far enough to control the patent situation or the transfer of stock certificates that are not in the actual possession of the Alien Property Custodian?

"MR. BRADLEY: That is correct.

"SENATOR UNDERWOOD: *And all you want to do about this amendment is simply to carry out the terms of the original act, and give you the power that is necessary to handle these particular features that are not covered by the general proposition?*

"MR. BRADLEY: *That is a very comprehensive statement of the whole purpose and scope of the amendments.*"

Senator Underwood, speaking on behalf of the Chairman of the Committee, in submitting the Bill to the Senate and in stating its purposes, after reciting the doubt under then existing law as to the power of the Alien Property Custodian to sell enemy owned patents along with the plants in which they were used, said: (56 Cong. Rec. Part II, pp. 11430-11431, [illegible]h Congress, Second Session):

> "In order to accomplish the real purpose of the original trading-with-the-enemy act it is essential, in order that these plants may be sold and a clear title not only to the machinery but to the patent rights be obtained, that the President be given this additional power. That is all there is in the amendment. There are only two things involved: One is the right to sell the shares of the stock that happen to be in the possession of an alien enemy in Germany where the Government does not get actual possession of them, and to sell them on the books; and the other is to give to the Alien Property Custodian, or whomsoever the President may designate, the right to sell the patent rights along with the machinery. It has been represented to the committee that, as a war necessity, this is of very vital importance, especi-

> ally at this immediate time. I think one of the most severe blows that this Government has delivered against the German Empire is that we have taken over alien-enemy property; that we are proceeding to dispose of it, and that we do not propose to allow aliens to continue to do business."

It thus appears that the purpose of the Amendment to Section 7 (*c*) was to resolve any doubts as to the power of the Alien Property Custodian to sell patents and trademarks with the business to which they were appurtenant, to enable the Custodian to pierce the veil of pretended American ownership with which certain Germans had clothed their ownership of property in this country and to seize shares of stock owned by Germans in American companies when the certificates representing such shares were located outside of this country.

By the Amendment of 1928 already noted, Congress evinced a purpose to confirm in former enemy owners the right to just compensation for the use of their patents under presidential licenses prior to their sale as a result of seizure. This purpose should be made effective, if necessary, by so limiting the broad language of the seizure provisions as to eliminate therefrom the authority to seize this extraordinary right, seizure of which does not appear to have been in the mind of Congress, as indicated by the foregoing legislative history of the Act, and was not necessary to effectuate its general purposes.

It is respectfully submitted that the decree of the court below should be reversed.

FREDERICK H. WOOD,
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Farbwerke vormals Meister Lucius & Bruning.

(1940)

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930.

No. 179.

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORM., ETC., ET AL., PETITIONERS,

vs.

CHEMICAL FOUNDATION, INC.; E. I. DU PONT DE NEMOURS & CO., ETC., ET AL.

No. 180.

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Brief for the Petitioners Badische-Anilin & Soda-Fabrik and Deutsche Gold & Silber Scheide Anstalt.

ALMUTH C. VANDIVER,
Of Counsel for Petitioners.

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Argued by
ALMUTH C. VANDIVER.

Supreme Court of the United States

OCTOBER TERM, 1930.

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No. 179.

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, DEUTSCHE GOLD &, SILBER SCHEIDE ANSTALT VORM., ETC., ET AL., PETITIONERS,

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No. 271.

WALTER O. WOODS, AS TREASURER OF THE UNITED STATES, PETITIONER,

vs.

THE CHEMICAL FOUNDATION, INC., AND E. I. DU PONT DE NEMOURS & CO.

No. 272.

HOWARD SUTHERLAND, AS ALIEN PROPERTY CUSTODIAN, PETITIONER,

vs.

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, E. I. DU PONT DE NEMOURS & CO., AND WALTER O. WOODS, AS TREASURER OF THE UNITED STATES.

No. 273.

HOWARD SUTHERLAND, AS ALIEN PROPERTY CUSTODIAN, PETITIONER,

vs.

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORM. ROESSLER, E. I. DU PONT DE NEMOURS & CO., AND WALTER O. WOODS, AS TREASURER OF THE UNITED STATES.

No. 274.

HOWARD SUTHERLAND, AS ALIEN PROPERTY CUSTODIAN, PETITIONER,

vs.

BADISCHE-ANILIN & SODA-FABRIK, E. I. DU PONT DE NEMOURS & CO., AND WALTER O. WOODS, AS TREASURER OF THE UNITED STATES.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

Brief for the Petitioners Badische-Anilin & Soda-Fabrik and Deutsche Gold & Silber Scheide Anstalt.

Opinions Below.

The opinion of the Circuit Court of Appeals, Third Circuit, (R., ff. 251-259, pp. 182-195) is reported in 39 F. (2d) 366 sub nom. *Farbwerke vormals Meister Lucius & Bruning et al.* v. *Chemical Foundation.*

The opinion of the District Court for the District of Delaware (R., ff. 176-190, pp. 136-148) is reported in 29 F. (2d) sub nom. *Chemical Foundation* against *E. I. du Pont de Nemours & Co.*

Jurisdiction.

The decree sought to be reviewed by the petitioners Badische Anilin & Soda Fabrik and Deutsche Gold & Silber Scheide Anstalt, was entered by the District Court for the District of Delaware on December 15, 1928 (R., ff. 191-194, pp. 148-151) and was affirmed by the Circuit Court of Appeals, Third Circuit, on March 4, 1930 (R., ff. 259-266, pp. 195-200).

The petition for writs of Certiorari was filed by these petitioners June 4, 1930, and was granted October 13, 1930 (R., ff. 269-276, pp. 201-203).

The jurisdiction of this Court is invoked under Section 347 (a) of the Judicial Code as amended by the Act of February 13, 1925 (Act of Mar. 3, 1891, c. 517, Sec. 6, 26 Stat. 828; Act of Mar. 3, 1911, c. 231, Sec. 240, 36 Stat. 1157; Act of Feb. 13, 1925, c. 229, Sec. 1, 43 Stat. 938).

Question Involved.

May suit be maintained by a former enemy owner of a patent, seized and assigned by the Alien Property Custodian, to obtain fixation of a reasonable royalty for the use of such patent by an American corporation under Federal Trade Commission license, for the period of use prior to disposition of the patent by the Alien Property Custodian?

Statutes Involved.

The pertinent provisions of the statutes and Executive Orders involved are as follows:

Section 10, subsections (c), (d), (e), (f) and (g) of the Trading with the Enemy Act (Act of October 6, 1917, ch. 106, 40 Stat. 411) is as follows:

> "(c) Any citizen of the United States or any corporation organized within the United States desiring to manufacture, or cause to be manufactured, a machine, manufacture, composition of matter, or design, or to carry on, or to use any trade-mark, print, label, or cause to be carried on, a process under any patent or copyrighted matter owned or controlled by an enemy or ally of enemy at any time during the existence of a state of war may apply to the President for a license; and the President is hereby authorized to grant such a license, nonexclusive or exclusive as he shall deem best, provided he shall be of the opinion that such grant is for the public welfare, and that the applicant is able and intends in good faith to manufacture, or cause to be manufactured, the machine, manufacture, composition of matter, or design, or to carry on, or cause to be carried on, the process or to use the trade-mark, print, label or copyrighted matter. The President may prescribe the conditions of this license, including the fixing of prices of articles and products necessary to the health of the military and naval forces of the United States or the successful prosecution of the war, and the rules and regulations under which such license may be granted and the fee which shall be charged therefor, not exceeding $100, and not exceeding one per centum of the fund deposited as hereinafter provided. Such license shall be a complete defense to any suit at law or in equity instituted by the enemy or ally of enemy owners of the letters patent, trade-mark, print, label or copyright, or otherwise, against the licensee for infringement or for damages,

royalty, or other money award on account of anything done by the licensee under such license, except as provided in subsection (f) hereof.

(d) The licensee shall file with the President a full statement of the extent of the use and enjoyment of the license, and of the prices received in such form and at such stated periods (at least annually) as the President may prescribe; and the licensee shall pay at such times as may be required to the alien property custodian not to exceed five per centum of the gross sums received by the licensee from the sale of said inventions or use of the trade-mark, print, label or copyrighted matter, or, if the President shall so order, five per centum of the value of the use of such inventions, trade-marks, prints, labels or copyrighted matter to the licensee as established by the President; and sums so paid shall be deposited by said alien property custodian forthwith in the Treasury of the United States as a trust fund for the said licensee and for the owner of the said patent, trade-mark, print, label or copyright registration as hereinafter provided, to be paid from the Treasury upon order of the court, as provided in subdivision (f) of this section, or upon the direction of the alien property custodian.

(e) Unless surrendered or terminated as provided in this Act, any license granted hereunder shall continue during the term fixed in the license or in the absence of any such limitation during the term of the patent, trade-mark, print, label, or copyright registration under which it is granted. Upon violation by the licensee of any of the provisions of this act, or of the conditions of the license, the President may, after due notice and hearing, cancel any license granted by him.

(f) The owner of any patent, trade-mark, print, label, or copyright under which a license is granted hereunder may, after the end of the

war and until the expiration of one year thereafter, file a bill in equity against the licensee in the district court of the United States for the district in which the said licensee resides, or, if a corporation, in which it has its principal place of business (to which suit the Treasurer of the United States shall be made a party), for recovery from the said licensee for all use and enjoyment of the said patented invention, trademark, print, label, or copyrighted matter: *Provided, However,* That whenever suit is brought, as above, notice shall be filed with the alien property custodian within thirty days after date of entry of suit: *Provided further,* That the licensee may make any and all defenses which would be available were no license granted. The court on due proceedings had may adjudge and decree to the said owner payment of a reasonable royalty. The amount of said judgment and decree, when final, shall be paid on order of the court to the owner of the patent from the fund deposited by the licensee, so far as such deposit will satisfy said judgment and decree; and the said payment shall be in full or partial satisfaction of said judgment or decree, as the facts may appear; and if, after payment of all such judgments and decrees, there shall remain any balance of said deposit, such balance shall be repaid to the licensee on order of the alien property custodian. If no suit is brought within one year after the end of the war, or no notice is filed as above required, then the licensee shall not be liable to make any further deposits, and all funds deposited by him shall be repaid to him on order of the alien property custodian. Upon entry of suit and notice filed as above required, or upon repayment of funds as above provided, the liability of the licensee to make further reports to the President shall cease.

If suit is brought as above provided, the court may, at any time, terminate the license, and may, in such event, issue an injunction to restrain the

licensee from infringement thereafter, or the court, in case the licensee, prior to suit, shall have made investment of capital based on possession of the license, may continue the license for such period and upon such terms and with such royalties as it shall find to be just and reasonable.

(g) Any enemy, or ally of enemy, may institute and prosecute suits in equity against any person other than a licensee under this Act to enjoin infringement of letters patent, trade-mark, print, label, and copyrights in the United States owned or controlled by said enemy or ally of enemy, in the same manner and to the extent that he would be entitled so to do if the United States was not at war; *Provided*, That no final judgment or decree shall be entered in favor of such enemy or ally of enemy by any court except after thirty days' notice to the alien property custodian. Such notice shall be in writing and shall be served in the same manner as civil process of federal courts."

Section 12 as originally enacted is as follows:

"All moneys (including checks and drafts payable on demand) paid to or received by the alien property custodian pursuant to this Act shall be deposited forthwith in the Treasury of the United States, and may be invested and re-invested by the Secretary of the Treasury in United States bonds or United States certificates of indebtedness, under such rules and regulations as the President shall prescribe for such deposit, investment, and sale of securities; and as soon after the end of the war as the President shall deem practicable, such securities shall be sold and the proceeds deposited in the Treasury.

* * * * * * *

After the end of the war any claim of any enemy or of an ally of enemy to any money or other property received and held by the alien

property custodian or deposited in the United States Treasury, shall be settled as Congress shall direct: *Provided, however,* That on order of the President as set forth in section nine thereof, or of the court, as set forth in sections nine and ten hereof, the alien property custodian or the Treasurer of the United States, as the case may be, shall forthwith convey, transfer, assign, and pay to the person to whom the President shall so order, or in whose behalf the court shall enter final judgment or decree, any property of an enemy or ally of enemy held by said custodian or by said Treasurer, so far as may be necessary to comply with said order of the President or said final judgment or decree of the court: *And provided further,* That the Treasurer of the United States, on order of the alien property custodian shall, as provided in section ten hereof, repay to the licensee any funds deposited by said licensee."

Paragraph four (*idem*), as amended by Act of March 28, 1918, is as follows:

"The alien property custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which has been or shall be, or which has been or shall be required to be, conveyed, transferred, assigned, delivered, or paid over to him in pursuance of the provisions of this Act, and, in addition thereto, acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, shall have power to manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights or powers which may be or become appurtenant thereto or to the ownership thereof in like manner as though he were the absolute owner thereof. * * * The alien property custodian shall

forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such property or rights so sold by him."

Executive Order of October 12, 1917, is, in part, as follows:

> "I hereby vest in the Federal Trade Commission the power and authority to issue, pursuant to the provisions of Section 10 (c) of the Trading with the Enemy Act, upon such terms and conditions as are not inconsistent with law, or to withhold or refuse a license to any citizen of the United States, or any corporation organized within the United States, to manufacture or cause to be manufactured a machine, manufacture, composition of matter, or design, or to carry on or cause to be carried on a process under any patent, or to use any trade-mark, print, label, or copyrighted matter owned or controlled by an enemy or ally of enemy, at any time during the present war; and also to fix the prices of articles and products manufactured under such licenses necessary to the health of the military and the naval forces of the United States, or the successful prosecution of the war; and to prescribe the fee which may be charged for such license, not exceeding $100 and not exceeding 1 per cent. of the fund deposited by the licensee with the alien property custodian as provided by law" (R., ff. 126-127, pp. 96-97).

Section 19 of the Settlement of War Claims Act of 1928 is as follows:

> "Sec. 19. Subsection (f) of section 10 of the Trading with the Enemy Act, as amended, is amended by adding at the end thereof the following new paragraph:
>
> 'In the case of any such patent, trade-mark, print, label, or copyright, conveyed, assigned, transferred or delivered to the Alien Property

Custodian or seized by him, any suit brought under this subsection, within the time limited therein, shall be considered as having been brought by the owner within the meaning of this subsection, in so far as such suit relates to royalties for the period prior to the sale by the Alien Property Custodian of such patent, trade-mark, print, label, or copyright, if brought either by the Alien Property Custodian or by the person who was the owner thereof immediately prior to the date such patent, trade-mark, print, label, or copyright, was seized or otherwise acquired by the Alien Property Custodian.'"

Statement.*

Provisions of the Trading With the Enemy Act as Originally Enacted.

The Trading with the Enemy Act became effective October 6, 1917 (Act of October 6, 1917 ch. 106; 40 Stat. 411).

Provision was made therein for the application by American citizens and corporations "at any time during the existence of a state of war" for license to use enemy owned patents. The President was authorized if he was of the opinion that issuance of the license would be for the public welfare to grant the application therefor and to fix the conditions of the license and the fee therefor (subs. [c]).

Provision was also made therein that the licensee should file with the President full statement of the

*NOTE: Hereinafter the respondent E. I. du Pont de Nemours & Co. is referred to as "DuPont"; the respondent Chemical Foundation, Inc. is referred to as the "Foundation"; the petitioners Farbwerke vormals Meister Lucius & Bruning, Deutsche Gold & Silber Scheide Anstalt vorm. Roessler and Badische Anilin & Soda-Fabrik are referred to as the "alien petitioners"; the respondent Frank White, as Treasurer of the United States, the respondent Walter O. Woods, as Treasurer of the United States, and the petitioner Walter O. Woods, as Treasurer of the United States are referred to as the "Treasurer"; and the Alien Property Custodian is referred to as the "Custodian".

extent of his use. The licensee was also required to pay to the Custodian not to exceed five per centum of the gross sums received by him or five per cent. of the value of the use. Moneys paid as fees by such licensees to the Alien Property Custodian should be deposited forthwith in the Treasury of the United States (subs. [d]).

Provision was also made therein that such payments should be a trust fund for the licensee and the owner of the patent (*idem.*).

The owner of the patent contemplated by the statute was the enemy owner as there had been no seizure of the patent and no legislation authorizing seizure and as the context of the statute clearly shows.*

Provision was further made in the Trading with the Enemy Act for the payment of the license fee funds, from the Treasury, upon the order of the Court, or upon the direction of the Alien Property Custodian (subs. [d]).

Provision was further made therein for the institution by the owner, within one year after the end of the war, of a bill in equity against the American licensee, in the District Court of the licensee's residence, for recovery from the licensee, for all use of the patent. To this suit the Treasurer of the United States was a necessary party. Notice to the Alien Property Custodian of institution of suit was also required (Subs. [f]).

The District Court was authorized to decree payment of a reasonable royalty to the owner (Subs. [f]).

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*The report of the House Committee on Interstate and Foreign Commerce attached to the report of the Senate Committee on Commerce, as an appendix, clearly shows that the enemy owner is the owner contemplated by the Congress. At p. 13 of the House report the following appears:

> "*The enemy patentee* (italics ours) may within a year after the end of the war file a bill in equity against the licensee in the United States District Court for the district in which the licensee resides, or, if a corporation, in which it has its principal place of business, for the recovery from the licensee for all use and enjoyment of the patented invention. * * * " (H. Rept. No. 85, 65th Cong. 1st sess.; Senate Rep. No. 113, accompanying H. R. 4960—65th Cong. 1st sess.)

Any and all defenses were permitted to the licensee (Subs. [f]).

The amount of any final judgment was to be paid, upon order of the Court, from the fund deposited by the licensee so far as available. Any balance was to be returned to the licensee (Subs. [f]).

If no suit was brought by the owner, or no notice of suit was filed with the Alien Property Custodian, the licensee was not liable to make any further deposits and all funds deposited by the licensee, upon order of the Custodian, were to be repaid to the licensee (Subs. [f]).

The Court was authorized, in case the licensee had made capital investments based on possession of the license, to continue the same for such period and upon such terms and with such royalties as it should find to be just and reasonable. The Court was also authorized to terminate the license and enjoin the licensee from infringement (Subs. [f]).

Enemies were permitted to institute and prosecute suits to enjoin infringements by any persons other than licensees (Subs. [g]). Enemies were also permitted to file and prosecute patent applications (Subs. [g]).

Section 12 provided that, after the end of the war any claims of an enemy to money or property, deposited in the Treasury should be settled as Congress shall direct. However, on order of the President, as set forth in Section nine or of the Court as set out in Sections nine and ten the Custodian or the Treasurer was required to pay out *enemy property*. And on order of the Custodian the Treasurer was required to return *funds* deposited by licensees.

Federal Trade Commission Licenses.

On October 12, 1917, by Executive Order, the President delegated his licensing power to the Federal Trade Commission (R., ff. 126-127, pp. 96-97).

On January 21, 1918, the Federal Trade Commission granted to E. I. DuPont DeNemours & Co., a corporation (hereinafter referred to as DuPont), on its application, license (No. 19), to make, use and vend indigo within the United States under letters patent numbered 718,340, then owned by the petitioners Badische Anilin & Soda-Fabrik, and license (No. 19) under letters patent numbered 680,395 then owned by the petitioner Deutsche Gold & Silber Scheide Anstalt. These licenses, among other things, provided that any sums due thereunder should be a debt due to the People, recoverable in an action by the People (R., f. 33, p. 30).

The license, as originally issued to DuPont, required the payment to the Alien Property Custodian of a royalty of 5% of the net profits derived from the sale of the products resulting from the licensed use (R., f. 30, p. 28).

The statute provided that the licensee should pay "not to exceed five per centum of the gross sums received by the licensee" from the sale of the licensed inventions, or, if the President so ordered, "five per centum of the value of the use" of such inventions to the licensee (Subs. [d]). The words "net profits" appearing in the license do not appear in the statute.

Under the license, in the original form, no payments were ever made by DuPont (R., f. 52, p. 44).

On January 14, 1920, the license to DuPont was altered by the Federal Trade Commission to provide for the payment by DuPont of 2% of the gross amounts received from the sale of products, manufactured under the patents aforesaid, from and after August 1, 1919 (R., f. 35, p. 32).

Subsequent to August 1, 1919, DuPont paid, under this license, to the Alien Property Custodian, $61,884.98 which it represents to be 2% of the gross amount received by it from the sale of indigo from and after August 1, 1919 (R., f. 51, p. 43).

No royalty payment for use between January 21, 1918 (the date of the original license) and August 1, 1919, has ever been made by DuPont to the Alien Property Custodian. The license was terminated and cancelled on September 1, 1920 (R., f. 37, p. 34).

Amendments to the Trading With the Enemy Act of March 24, 1918.

Congress, by an Act, approved March 24, 1918, amended paragraph 4 of Section 12 of the Trading with the Enemy Act (describing the Alien Property Custodian as a common law trustee) to provide that as to any property, *except money*, seized, the Custodian might exercise any rights or powers appurtenant thereto "as though he were the absolute owner thereof" (40 Stat. 459).

On November 4, 1918, Subdivision (c) of Section 7 was amended to authorize the seizure of patents "choses in action and rights and claims of every description" belonging to an enemy (40 Stat. 1020).*

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*As amended:

"If the President shall so require any money or other property including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade-marks, choses in action, and rights and claims of every character and description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, which the President, after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered, and disposed of as elsewhere provided in this Act.

Any requirement made pursuant to this Act, or a duly certified copy thereof, may be filed, registered, or recorded in any office for the filing, registering, or recording of conveyances, transfers, or assignments of any such property or rights as may be covered by such requirement (including the proper office for filing, registering, or recording conveyances, transfers, or assignments of patents, copyrights, trade-marks, or any rights therein or any other rights); and if so filed, registered, or recorded shall impart the same notice and have the same force and effect as a duly executed conveyance, transfer, or assignment to the Alien Property Custodian so filed, registered or recorded."

Seizures of Patents in Suit by Alien Property Custodian.

Feb. 3, 1919. The Alien Property Custodian addressed a demand to "Badische Anilin & Soda Fabrik, Ludwigshafen am Rhine, Germany; Messrs. Hauff & Worland, 41 Park Row, N. Y.; The Commissioner of Patents, Washington, D. C." stating that he seized Letters Patent No. 718,340, dated Jan. 13, 1903, and "every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government for past infringement thereof" and he required that "you convey, transfer, assign and deliver the same to me, as Alien Property Custodian" (R., ff. 101-103, pp. 77-79).

He further said, therein:

> "I, as Alien Property Custodian do request that the Commissioner of Patents record this requirement upon the books and records kept by him, to show the assignment and transfer of Letters Patent and applications for Letters Patent in respect to said Letters Patent and applications for Letters Patent above mentioned and I further request that the Commissioner of Patents issue any and all Letters Patent which may be granted upon said Letters Patent to me as Alien Property Custodian, my successors in office, or assigns" (R., f. 102, p. 79).

Service of this demand was acknowledged by Messrs. Hauff & Worland on February 11, 1919 and by the Commissioner of Patents, February 20, 1919 (R., f. 103, p. 79).

March 22, 1919. The Alien Property Custodian addressed a similar demand to "E. I. DuPont De Nemours & Co., Wilmington, Del., Roessler & Has-

slacher, 100 William St., New York, N. Y., To the Commissioner of Patents, Washington, D. C., and To all to whom these Presents may Come" seizing Patent No. 680,395 (R., ff. 98-99, pp. 75-76; R., f. 99, p. 76).

Service of the demand was acknowledged by the Acting Commissioner of Patents, March 26, 1919, and the same was recorded on the same day in "Transfer of Patents" Liber K 106, p. 417 (R., f. 100, p. 76).

March 22, 1919. The Alien Property Custodian addressed a similar demand to "E. I. DuPont De Nemours & Co., Wilmington, Del., H. A. Metz Laboratories, Inc., New York, N. Y., To the Commissioner of Patents, Washington, D. C." seizing Patent No. 868,294 (R., ff. 103-104, pp. 79-80; R., ff. 104-105, pp. 80-81).

Service of this demand was acknowledged by the Acting Commissioner of Patents on March 26, 1919, and the same was recorded on the same day, in "Transfer of Patents" Liber Z 106, page 301 (R., f. 105, pp. 80-81).

Assignment of Custodian to Foundation, April 10, 1919.

April 10, 1919. The Alien Property Custodian, for a consideration of $250,000, assigned to the Chemical Foundation, Inc., "the whole right, title and interest acquired" by him, as Alien Property Custodian to Letters Patent Nos. 718,340, 680,395 and 868,294, among others "together with all claims and demands for profits and damages recoverable at law or in equity for the past infringement of said Letters Patent of the United States against every person, firm, corporation or government except the

> government of the United States of America * * * all as more specifically described and set forth in the requirements or demands relating to said Letters Patent * * * without any reservation or qualification whatsoever * * * and subject only to the provisions of a certain release to the United States of America * * * and to the rights of citizens of the United States of America * * * as set forth in the requirements or demands'' (R., ff. 108-111, pp. 83-86).

The Custodian could assign no more than he had seized.

The demands and assignment expressly recognized the right of DuPont to use the patents under license of the Federal Trade Commission upon payment of the license fees to the Custodian for deposit in the Treasury.

Executive Order of February 13, 1920.

February 13, 1920. Almost one year after the first assignment, the President signed an Executive Order in which it was recited that ''doubt has arisen as to the authority of the said Alien Property Custodian to sell and convey to the said The Chemical Foundation, Inc., certain of the said choses in action, rights, interests, benefits under agreements, and rights and claims including rights to receive moneys by way of royalties or otherwise, as compensation for the use of patents, trade-marks or trade names'' (R., f. 116, pp. 89-90).

The President then authorized the Custodian to sell at private sale to the Foundation ''all choses in action, rights, interests and benefits under agreements and rights and claims of every character and description which the Alien Property Custodian may seize or may

have seized under the provisions of the 'Trading with the Enemy Act' and the amendments thereto now or hereafter enacted" (R., f. 117, p. 90).

The Alien Property Custodian was also authorized "in the case of sales heretofore made by him of any property which he is hereby authorized to sell, but as to which his authority to sell the same under the said Orders of February 26, 1919 and April 5, 1919, may be deemed doubtful to confirm and ratify the said sales by the execution and delivery of a suitable instrument of confirmation" (R., f. 117, p. 90).

The President's reasons for the foregoing determination and order were "stated in the said orders of Frank L. Polk on the 26th of February, 1919, and the 5th of April, 1919; and in addition thereto, the public interest will be best served by the elimination of any enemy interest adverse to American citizens arising by reason of said choses in action, or rights, interests and benefits under agreements and by the devoting of any payments made by reason of said choses in action or under said agreements by The Chemical Foundation, Inc., to the promotion of the objects stated in its charter" (R., f. 117, p. 90).

Second Assignment of the Custodian Dated March 1, 1921.

March 1, 1921. Over one year after the President's Executive Order, and two years after the original assignment, the Custodian "for valuable consideration heretofore received" assigned, sold, set over and transferred to the Foundation "all property, including (but not thereby limiting the generality of the foregoing) letters patent, rights under letters patent, applications for letters patent and rights thereunder, copyrights, rights under copy-

rights, certificates of registration thereof, the publications upon which such registrations were granted, trade-marks, rights under trade-marks, together with the good will and business pertaining thereto including all profits and damages recoverable at law or in equity for past infringement with respect to any and all of the foregoing, choses in action, rights, interests, and benefits under agreements, and rights and claims of every character and description with respect to all of the foregoing, seized by me as Alien Property Custodian, or by my predecessor in such office specifically referred to in and assigned by said assignments, and I do hereby confirm and ratify the sale and assignment of and do hereby sell, assign, transfer and set over to said The Chemical Foundation, (Inc.), all choses in action, rights, interests, and benefits under agreements and rights and claims of every character and description growing out of and appurtenant to the ownership of said property, including (but not thereby limiting the generality of the foregoing) rights to receive moneys by way of royalties or otherwise as compensation for the use of patents, copyrights, and trademarks, and all right, title and interest in and to the choses in action and the funds referred to in section 10, subsection (f) of the 'trading with the enemy act,' as amended, acquired by the Alien Property Custodian by virtue of the seizures by which there were seized patents, copyrights, or trade-marks, under which a license had theretofore been granted in accordance with the provisions of section 10, subsection (c) of said act, as amended, all of which property I, as Alien Property Custodian, from time to time have determined and do hereby determine to relate to the objects and pur-

poses of said the Chemical Foundation (Inc.), as expressed and defined in its charter; the intent and purpose of this instrument being to vest in said the Chemical Foundation (Inc.), every right, title, interest, claim and demand, save such as are specifically excepted in and by the said assignments acquired by the Alien Property Custodian by virtue of the seizures whereby the said property was seized" (R., ff. 123-124, pp. 94-95).

No new, or additional demand, was served by the Custodian, on the Commissioner of Patents, or the Treasurer of the United States or any other person.

While the Custodian's original assignment to the Foundation was amplified, in the second assignment, the original demand never served on the Treasurer, was not.

The Congress, in the Amendment of November 4, 1918 provided the method of seizing patents, by serving the Commissioner of Patents, but provided no machinery for seizing the enemy's intangible right granted by Congress for peace-time compensation for use.

Treaty of Peace.

The Treaty of Peace with Germany was signed at Berlin, August 25, 1921; ratification advised by the Senate, October 18, 1921; ratified by the President, October 21, 1921; ratifications exchanged at Berlin, November 11, 1921; proclaimed by the President, November 14, 1921 (42 Stat. 1939, 1943).

Part X, Sec. IV, Article 297 and annex, paragraphs 1 and 3, Treaty of Versailles, were adopted by Article V (1) of the Treaty of Berlin. (*U. S.* v. *Chemical Foundation*, 272 U. S. 1, 12.)

The President's Proclamation of November 14, 1921, declared that the War With Germany terminated on July 2, 1921.

Institution of Suits.

Just prior to July 2, 1922, and therefore within one year after the termination of the War, the petitioners and the Chemical Foundation, each claiming to be the "owner" referred to in subsection (f) of the Trading with the Enemy Act, instituted suit against DuPont for the fixation of a reasonable royalty for the use of the indigo patents aforesaid (R., ff. 1-50, pp. 1-42).

The Chemical Foundation prayed for the fixation of a reasonable royalty only from the time of the Custodian's assignment of the patents to it, that is to say, from April 10, 1919 (R., f. 20, pp. 14-15).

By agreement the suit of the Chemical Foundation and the three suits of petitioners and another German corporation called Farbwerke vormals Meister Lucius & Bruning, were consolidated and heard at the same time, by the District Court of Delaware on April 30, 1928 (R., ff. 53-55, pp. 44-45).

Upon the trial the petitioners limited their prayer to the fixation of a reasonable royalty, only for the period from the date of the original license to DuPont (January 21, 1918) to the date of the Custodian's assignment to the Chemical Foundation (April 10, 1919) (R., f. 177, p. 137).

Decision in Case of U. S. v. Chemical Foundation by This Court.

Between the date of the institution of these suits and the hearing of the same, this Court had decided the case of *U. S.* v. *Chemical Foundation*, (272 U. S. 1), and the Congress had amended Sec. 10, subsection (f) for the first time since its enactment.

The case of *U. S.* v. *Chemical Foundation*, was decided by this Court, October 11, 1926.

Passage of Settlement of War Claims Act.

Section 10, subsection (f) of the Trading with the Enemy Act was amended by Sec. 19 of the Settlement of War Claims Act in effect March 10, 1928 (R., f. 180, pp. 139-140).

This amendment provided that any person who was the owner of patents immediately prior to seizure, who had brought suits to have royalties fixed for licensed use, within the statutory period, should be considered by the Court, as the owner, as that term is used in subsection (f) as to the royalties accruing prior to disposition of the patents by the Custodian (R., f. 180, pp. 139-140).

Proceedings Below at the Trial.

The issues before the District Court were as follows:

The petitioners asked for the fixation of a reasonable royalty for the period prior to April 10, 1919, the date of assignment of the patents to the Foundation (R., ff. 40, 43, 49, pp. 35, 37, 38, 41, 42).

The Foundation asked for the fixation of a reasonable royalty subsequent to this period (R., f. 20, pp. 14-15).

DuPont opposed the fixation of a reasonable royalty as prayed for in the petitioners' bill as limited at the trial to the period above stated (R., f. 51, p. 43).

The Attorney General opposed the fixation of a reasonable royalty for the period subsequent to sale as prayed for by the Chemical Foundation (R., f. 56, p. 46).

The Attorney General also requested substitution of the Custodian for the petitioners (R., ff. 66-69, 76-79, 87-90, pp. 53-55, 60-62, 67-69).

There was no controversy before the Court as to the fact that the petitioners were the owners of the patents involved in this litigation at the time of the seizure

of the same by the Alien Property Custodian, and that the petitioners had brought suit within one year after the end of the war.

The defendant DuPont moved to dismiss the petitioners' complaints on the ground that they were not the owners of the patents (R., ff. 62, 72, 83, pp. 50, 57, 64).

The Treasurer of the United States moved to dismiss the complaints of the Foundation (R., f. 56, p. 46).

The District Court, by order, denied the motion of the Custodian to be substituted, as plaintiff, for the petitioners (R., ff. 194-195, 197-198, 200-201, pp. 151-152, 153-154, 155-156).

The District Court, by order, also denied the motion of the Treasurer to dismiss the complaint of the Foundation (R., f. 190, p. 148).

The District Court, by decree, granted the motion of DuPont to dismiss the petitioners' bills of complaint (R., ff. 196, 198, 201, pp. 152, 154, 156).

The District Court decreed judgment for the Foundation as follows:

> "First: That the plaintiff became on April 10, 1919, and has ever since been and is now the sole owner of the Letters Patent of the United States Nos. 680395, 868294 and 718340 and of the inventions and discoveries covered thereby and of every right, title and interest therein, including in particular the right inuring to the 'owner' of said Letters Patent, under and by virtue of Section 10-f as originally enacted of the Act of Congress known as the Trading with the Enemy Act, to sue and recover for the use and enjoyment of the inventions and discoveries covered by said Letters Patent by any person or persons licensed under other provisions of said Act to use and enjoy the same.
>
> Second: That the right of recovery so belonging to the plaintiff embraces the right to recovery

for all use and enjoyment of the inventions and discoveries covered by said Letters Patent by every and all such person or persons so licensed, without regard to whether or not such use and enjoyment was wholly or in part before or after said April 10, 1919, and is unaffected by the amendment of said Section 10-f of said Act by Section 19 of the Act of Congress known as the Settlemenet of War Claims Act of 1928, or by any other amendment of said Trading with the Enemy Act.

THIRD: That the plaintiff is entitled to recover from the defendant E. I. duPont de Nemours and Company a reasonable royalty for all use and enjoyment by said defendant of the inventions and discoveries covered by said Letters Patent under Federal Trade Commission License No. 19 dated January 21, 1918, and under said License as amended by order of said Commission dated January 14, 1920; and

FOURTH: That the plaintiff having in its bill of complaint limited its claim to such recovery to all such use and enjoyment for the period from on and after April 10, 1919, do recover from the defendant E. I. du Pont de Nemours and Company a reasonable royalty for all use and enjoyment of the inventions and discoveries covered by said Letters Patent by said defendant E. I. du Pont de Nemours and Company pursuant to said License and to said License as amended for the period from on and after April 10, 1919, with interest thereon, the account to be taken and stated and such reasonable royalty ascertained by proceedings appropriate for such purpose; and

FIFTH: That upon the taking and stating of said account and the ascertainment of said reasonable royalty and after consideration thereof by this Court the plaintiff shall have a final decree herein against the defendant E. I. du Pont de Nemours and Company for the amount of such

reasonable royalty for the use and enjoyment of the inventions and discoveries covered by said Letters Patent by said E. I. du Pont de Nemours and Company for the period from on and after April 10, 1919, as this Court shall thereby determine, with interest thereon, and costs to be taxed by the Clerk, and that said final decree shall further provide that the defendant the Treasurer of the United States forthwith pay over to the plaintiff the fund deposited with him by the Alien Property Custodian representing payments by the defendant E. I. du Pont de Nemours and Company, pursuant to the terms of said License and of said License as amended, for and on account of its use and enjoyment under said License and said License as amended of the inventions and discoveries covered by said Letters Patent, together with all income from said fund and increment thereof to the extent that said fund and the income and increment thereof do not exceed the amount of said reasonable royalty, interest and costs theretofore by said final decree directed to be paid to the plaintiff by said defendant E. I. du Pont de Nemours and Company for its said use and enjoyment of the inventions and discoveries covered by said letters patent for the period from on and after April 10, 1919, such payment when received by the plaintiff to be applied by it as a payment by said defendant E. I. du Pont de Nemours and Company on account of the amount so directed to be paid by said defendant to the plaintiff by said final decree" (R., ff. 191-194, pp. 149-151).

Appeals.

Petitioners, the Treasurer and the Alien Property Custodian petitioned for leave to appeal and the petitions were granted (R., ff. 203-206; 217-219; 228-229; 235-236, pp. 157-159, 165-166, 171-172, 174-175).

Assignments of Errors appear in the record at folios 207-217; 220-228; 230-235; 237-242; pp. 159-165, 167-171,

172-175, 176-178). Stipulation as to transcript of record appears at folios 243-248, pp. 178-181.

The Circuit Court of Appeals, Third Circuit, affirmed the orders and decrees of the District Court (R., ff. 250-267, pp. 181-200).

Summary of Argument.

1. The Congress at no time authorized the seizure or disposition of the enemy patent owners' right to compensation for use of captured patent rights.

2. The right to compensation for captured patent property rights was never seized by the Alien Property Custodian.

3. The Congress, in 1917, authorized compensation, after the war, to enemy patent owners and reaffirmed this right in the former enemy owners in Sec. 19 of the Settlement of War Claims Act of 1928.

4. The decrees and orders of the District Court, affirmed by the Circuit Court of Appeals, Third Circuit, are not in accord with the supreme law of the land as expressed in Sec. 10 (f) of the Trading with the Enemy Act as amended by Sec. 19 of the Settlement of War Claims Act of 1928.

5. Sec. 19 of the Settlement of War Claims Act of 1928, amending subs. (f) Sec. 10 of the Trading with the Enemy Act, is a valid exercise by Congress of its legislative powers.

6. Sec. 19, as aforesaid, is part of the supreme law of the land, binding on the District Court and the Circuit Court of Appeals.

7. Sec. 19, as aforesaid, deprives neither DuPont nor the Chemical Foundation of property, money or vested rights ever possesesed by either.

ARGUMENT.

I.

The decrees and orders of the District Court, affirmed by the Circuit Court of Appeals, Third Circuit, are not in accord with the supreme law of the land as expressed in Sec. 10 (f) of the Trading with the Enemy Act as amended by Sec. 19 of the Settlement of War Claims Act of 1928.

The decrees of the District Court, affirmed by orders of the Circuit Court of Appeals, that the Foundation is the sole owner of the right to sue and recover for the use and enjoyment of certain enemy inventions, by Presidential licensees and is entitled to recover for all use and enjoyment both before and after April 10, 1919 (the date of assignment of the patents by the Custodian to the Foundation) are contrary to law and to the facts applicable to the case (Decree in full at R., ff. 191-194, pp. 149-151; *supra*, pp. 23-25).

The foregoing Judicial determination is squarely in conflict with the legislative provisions of Section 19 of the Settlement of War Claims Act of 1928.

This statute provided that the enemy owner, immediately prior to seizure, should be considered by the Court, as the owner of the patent, within the terms of Sec. 10 of the Trading with the Enemy Act in any suit brought within the statutory period, to recover reasonable value for the use and enjoyment of the patented invention under Presidential license (Text, *supra*).

We consider hereinafter the effect upon alien patentees of the passage of the original Trading with the Enemy Act; the various amendments thereto and of the acts of the Executive Department in connection therewith culminating in the decrees under consideration.

Pre War Status of Alien Patentees.

Peace-time "patent rights" were the creation of the law makers.

The legislature's power to create was derived from the Constitution (Art. I, Sec. 8, Cl. 8).

The authorization of the latter document was to "promote the progress of science and useful arts by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries" (*ibid.*).

Patents contained "a grant to the patentee, his heirs and assigns, for the term of seventeen years, of the exclusive right to make, use and vend, the invention or discovery throughout the United States and the territories thereof" (R. S., Sec. 4884). They might be obtained by aliens.

Patent rights, as between citizen and citizen and citizen and alien, might be transferred only in accordance with laws regulating such transfers (*Jewett* v. *Atwood Suspender Co.*, 100 Fed. 647).

The whole patent, comprising the exclusive right to make, use and vend might be transferred by written assignment (*Waterman* v. *MacKenzie*, 138 U. S. 252).

An undivided part or share of that exclusive right might be similarly transferred (*ibid.*).

The exclusive right to make, use and vend throughout a specified part of the United States might be, in like manner, transferred. (*ibid; U. S.* v. *General Electric Co.*, 272 U. S. 476.)

Transfer of the entire exclusive right or of the exclusive right, in a specified part of the United States, permitted the assignee to sue for infringement in his own name. Transfer of an undivided part of the exclusive right permitted suit only in the name of assignor and assignee, jointly (*ibid.*).

Any assignment or transfer, short of one of the foregoing, was a mere license, giving the licensee no title in the patents and no right to sue at law in his own name for an infringement. (*Gaylor* v. *Wilder*, 10 How. 477; *Moore* v. *Marsh*, 7 Wall. 515; *Waterman* v. *Mackenzie*, *supra*.)

The entire and unqualified monopoly, in specified territory, or an undivided interest in the monopoly, must be conveyed, else the assignment was a mere license (*Gaylor* v. *Wilder*, *supra*).

When the transfer amounted to a license only, title remained in the owner of the patent (*Waterman* v. *Mackenzie*, *supra*).

Whether a transfer was an assignment or a license did not depend upon the designation of the instrument, but upon its legal effect (*ibid.*).

The statute secured to the inventor the exclusive right to make, use and vend the thing patented and consequently prevented others from exercising like privileges without the consent of the patentee (*Bauer* v. *O'Donnell*, 229 U. S. 1).

Even the Government had no more right than a private person to use a patented invention without license of the patentee or making compensation to him (*Belknap* v. *Schild*, 161 U. S. 10).

Congress, by the Act of June 25, 1910, c. 423, provided a method by which a patentee may recover reasonable compensation for use by the United States, where such use was without license by the patentee. This Court held that such Congressional enactment did not give the United States a general license to use the inventions

disclosed by patents. (*Cramp & Sons* v. *Curtis Turbine Co.*, 246 U. S. 28; *Richmond Screw Anchor Co.* v. *U. S.*, 275 U. S. 331.)

Rights secured under the grant of letters patent by the United States were property and protected by the guarantee of the Constitution and not subject therefore to be appropriated even for public use without adequate compensation (*ibid*).

Congressional Capture of Enemy Patent Rights.

The Sovereign People of the United States of America in the Trading with the Enemy Act, approved October 6, 1917, enunciated their policy as to patents owned by German nationals (Statute, *supra*).

Citizens were forbidden to have intercourse or commerce with the subjects of the power with which America was then at war. These subjects were declared to be "enemies." They could not, directly or indirectly, make, use or vend their inventions in the United States. No citizen could negotiate for or accept transfer of the right to make, use and vend (*ibid*).

Statutory "enemies" were the legal owners by legislative permission, at that time, of certain "patent rights." These rights included the exclusive authority to make, use and sell certain inventions; to permit others to do so and to invoke the aid of the courts to prevent unauthorized persons from so doing.

These "rights" have no actual physical existence. They were figments of the legalistic imagination.

They were intangible, impalpable, incorporeal.

The legislative power which created them by enactment, appropriated part thereof by enactment.

The peace-time right to use, carrying with it the right to permit others to use, granted by the Sovereign People, could not be exercised in war time, by the grantee.

The Sovereign People took over this exercise. This was a capture of an abstraction; the conquest of a fiction; the appropriation of a mental concept.

The People authorized their President to permit Americans to make, use and vend the enemies' patented invention (Statute, *supra*). This was the exclusive peace-time function of the patentees.

The "right" was left in the enemy to resort to the Court, by representative, to prosecute non-licensees.

The American Constitution permits no taking of private property without just compensation (Fifth Amendment).

Patent rights are property in juristic contemplation.

The American People did not appropriate the right to use the enemy inventions exclusively for Government purposes in the sole interests of the whole People, in the prosecution of the war.

Without restriction, under the war legislation, the inventions might be devoted to money making purposes by American commercial licensees.

In the contemplation of legal and economic theorists this was devotion in war time and thereafter, of an enemy person's property to the benefit of citizens, accomplished by the intervention of sovereignty.

The Congress provided that users should pay.

Administrative functionaries were directed to issue permits to use, to collect the avails of use, and to hold the same, secure, in the Federal Treasury, until after the close of hostilities (Statute, *supra*).

To the Judiciary, when Peace had dispelled the animosities of War, was entrusted the task of determining and fixing in terms of money the *quantum* of the value of American citizens' "use and enjoyment" of the patents. The funds paid into the Treasury by licensees were available for the satisfaction of such award (*ibid*).

Excess, if any, was to be returned to the American. Judgment over might be ordered, if the fund was insufficient. The American user, on terms, might be permitted to continue his use, or the Judiciary was empowered to terminate the same (*ibid*).

The Presidential permit was an absolute defense to the American licensee, against any suit of the enemy, after the war, except to recover compensation. All other defenses in such suit might be interposed by the American user (*ibid*).

The Congress provided *post bellum* relief and redress, in terms of money, for the deprivation of the benefits of the statutory grant of exclusive, monopolistic patent property rights.

If the taking was sovereign capture, condemnation, appropriation by eminent domain, sequestration, subrogation, benevolent trusteeship, or otherwise, the post bellum remedies were in the nature of compensation.

The legislative body authorized to make the appropriate regulations for such affairs so ordained.

The funds collected under Presidential license, for use were designated in the statute "trust funds" for the owner and the licensee (Statute, *supra*). They belonged neither to the enemy nor to the licensee. Title was in the People.

The enemy owner was permitted, after the war, to seek, by suit against Treasurer and licensee, possession of all, or some of these funds as compensation for the action of the People's legislative representatives. The Judiciary was merely the instrument to ascertain the *quantum* of the compensation. The fact that the "claim" should, by Congressional direction, take the form of a suit against the licensee, with the Treasurer as a party, did not change the nature of the claim. The Treasurer was a necessary party and the Custodian was entitled to notice. Suit against the licensee was appropriate so

that payment, for use, for the life of the patent, extending beyond the period of hostilities, might be obtained or the license cancelled. But the suit was to recover for use and enjoyment occasioned by sovereign action in derogation of peace time rights.

The explicit legislative intent was, to provide money payment to the owner on October 6, 1917, of the patent rights; to compensate such owner for the Congressional deviation in war time from the peace time laws under which the patentee had submitted his invention to the scrutiny of American officials, to obtain the issuance of "letters patent."

The peace time law was a pact and a covenant between the People and the alien (*Jewell Filter Co.* v. *Jackson*, 140 Fed. 340, 343; *Krupp* v. *Midvale Steel Co.*, 191 Fed. 588, 594; *Railroad Supply Co.* v. *Hart Steel Co.*, 222 Fed. 261-274).

Its war time abandonment necessitated indemnification, this being the traditional *amende honorable* of sovereignties.

This assurance of indemnification was not a right absolute; a chose in action or a chose in possession. It was a gesture of sovereign magnanimity. It was personal to the patentee; non transferrable; non seizable by other servants of the People and non dedicable by such servants to private interests. The control and disposition thereof was in the Legislative Hand of the Body of the People. Not in the Executive Hand. And not in the Judicial Conscience of the People.

The foregoing sets out the plan of Congress as to the capture of the use of enemy patent rights; the licensing of such use to American nationals and the compensation for such use to be adjusted by the Judiciary, as to *quantum*, after hostilities ended.

Status of Enemy Patentees After Passage of the Trading With the Enemy Act.

The Trading with the Enemy Act, changing the alien patentee's status to "enemy" apparently superseded all of the patent laws applicable to his peace time status. Else there would be an irreconcilable conflict between the peace statute and the war law. *Salus reipublicae suprema lex.*

The enemy patentee's peace time right to exclude all others from the use of his inventions was appropriated by the People of the United States. The patentee's exclusive right to license others to use his inventions was also appropriated. Exercise of this war power is an act of sovereignty. 13 Am. L. Reg. 265, 337, 401.

The enemy's naked title, in the Patent Office; and his right to sue non licensees for infringement, remained. Nothing else.

Effect of the Amendments of March 28, 1918 and November 4, 1918.

On March 28, 1918, the Trading with the Enemy Act was amended to permit the Custodian to manage property, *other than money*, delivered to him as though he were the absolute owner thereof. Disposition of such property, *except money*, by sale was included in the new powers (Text, *supra*).

On November 4, 1918, an additional amendment to the Trading with the Enemy Act became effective, authorizing the seizure of patents and patent rights (Text, *supra*).

The two statutes authorized the Custodian to seize and dispose of enemy patent property and rights, *except money*, as if he were the absolute owner thereof.

The provisions of Sec. 10 (*f*) were not specifically repealed by either amendment.

As no presumption of repeal of statutes, by implication, may be indulged in, it must be considered that Sec. 10, subs. (f), giving the enemy, contingently, post bellum right to compensation for his appropriated property, was not affected by either the March or November, 1918 amendment, and that no mandate to the Custodian to seize the enemy's contingent right to post bellum compensation was authorized by the Congress (*U. S.* v. *Noce*, 268 U. S. 619).

Shortly after the November amendment, the Custodian seized the patents with which this case is concerned (Text of Seizures, *supra*).

We now consider the effect of these seizures.

The question arises, *in limine*, as to (1) what the Custodian was authorized to seize; (2) what he did seize, and (3) what, if anything, was not susceptible of seizure and (4) what was not seized.

(1) What the Custodian was Authorized to Seize.

As to (1), the Congress authorized in the November 4, 1918 amendment, the seizure of "patents," "choses in action," and "rights and claims of every character and description," owing, belonging to or held for an enemy. The context of the Act as amended shows, conclusively, that "rights" referred to such rights as the patentee, *qua* patentee, might possess (Text, *supra*).

As Section 10 remained, unaffected, the intention of Congress to preserve the right of compensation is further apparent.

The amendment of November 4, 1918 provided for the filing, registering or recording of the requirement or demand, made by the Custodian pursuant to the Act, "in any office for the filing, registering or recording of conveyances, transfers of assignments of any 'such property or rights as may be covered by such require-

ment," including the office for registering assignments of patents "or any rights therein or any other rights" (Text, *supra*).

On February 26, 1918, the President, by Executive Order, provided for the service of demand upon the person performing any duty concerning enemy money or exercising any right, power or authority thereover, or upon the person holding any enemy right.*

The same order defined "right", "title" "interest" respectively, to be such right, title and interest of the enemy *"as may actually exist"*, and also "such as might or would exist if the existing state of war had not occurred" (R., f. 134, p. 103).

This order also provided that "a demand for the conveyance, transfer, assignment, delivery and payment of money or other property unless expressly qualified or limited shall be deemed to include every right, title, interest, and estate of the enemy in and to the money or other property demanded as well as every power and authority of the enemy thereover".

The President possesses no legislative power. He was empowered by the Trading with the Enemy Act to make appropriate rules and regulations. This provision in the Executive Order was ineffective to author-

*The provision, in full, is as follows:

"Notice of any demand made by the Alien Property Custodian may be given to any person, who alone, or jointly with others, may hold or have the custody or control of or may be exercising any right, power or authority in or over or may be performing any duty concerning the money or other property mentioned in the demand; and, in any notice given, the Alien Property Custodian may require of the person notified the performance of any act or thing within the power of the person notified which may be necessary or proper to make the demand fully effective, or to establish proper acknowledgment, recognition or evidence of the right, title, interest and estate of the Alien Property Custodian in and to such money or other property and of the power and authority of the Alien Property Custodian thereover, and it shall be the duty of any person so notified to perform any act or thing so required. Such notice may be given in person or by mail." (R., f. 137, pp. 104-105.)

ize the acquisition of the enemy's right to compensation for the capture of his property.

The foregoing statute and Executive Orders show, positively, that the Custodian was authorized to seize patents and patent rights, actually existing, or which would have existed had no war intervened.

(2) What the Custodian Did Seize.

As to (2), the Custodian by serving his requirement or demand upon the Commissioner of Patents, seized "the letters patent and every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government for past infringement" (R., f. 104, p. 80).

This requirement or demand, under the statute, when recorded in the Patent Office, operated as a conveyance, transfer and assignmenet to the Alien Property Custodian of the patents and every "right, title and interest with respect thereto" incident to patent ownership as evidenced by the records of the Patent Office and as set out in the demand (Statute, *supra*).

All the enemy had left, as patentee, at that time was the record title to the patents, encumbered with the captured use effected by the sovereign in the terms of the original Trading with the Enemy Act; and the statutory right to sue non licensees.

The service of the requirement or demand upon the Commissioner of Patents and the recording of the same, vested in the Custodian the remaining rights of the enemy, as patentee, not previously captured, as above set out, but nothing else in addition thereto. It did not vest in the Custodian the right to cancel the Federal Trade Commission's licenses or to take over that body's licensing power. The President continued this power (Executive Order, R., f. 157, p. 122).

The captured rights were those actually existing and which would have existed had there been no war. In other words, peace time rights.

(3) What, if Anything, Was Not Susceptible of Seizure.

As to (3), the question arises as to whether the Custodian's service, upon the Commissioner of Patents, vested the Custodian with the post bellum privilege granted by the Sovereign's legislative favor, in the Trading with the Enemy Act to the patentee to recover compensation, in peace times, for the captured use, in war time, of his private property.

This right to compensation arose *after*, or concomitantly with capture. It was inchoate and contingent. It existed in the conscience of the Sovereign. The Act was a visible manifestation of the Sovereign will. The Sovereign intention was revocable at pleasure. No vested property right was created. Nothing could be done until after the war. No Americans, during the war, could take the right by assignment from the enemy. No official in America held the right, had custody or control of it or exercised any power or authority over it or performed any duty concerning it or had any evidence of it (Ex. Order, February 26, 1918, *supra*). No office, in America, existed in which a conveyance, assignment or transfer of the right could be filed, registered or recorded, or in which evidence of the capture or cancellation of the right could be entered (Statute, *supra*). Neither Executive nor Judiciary could divest the enemy of the compensatory right for war time penalties, granted by the Legislature.

No express language of the statute provided for its seizure. No machinery for its seizure was set up.

The *res* which was the subject of the *jus* was in the hands of the Treasurer of the People of the United States. The American right to benefit under the captured use was evidenced by the records of the Federal Trade Commission, the delegate of the Presidential licensing power.

No demand was served upon either the Treasurer or the Federal Trade Commission.

It seems clear, therefore, that the intangible right to compensation was not susceptible of seizure, by officials of the Executive Department by service of demand upon the Commissioner of Patents or otherwise. It is equally clear that the Congress did not contemplate or authorize its seizure. What Congress contingently gave the enemy, *in futuro,* Congress could, but did not, take away, expressly or by implication.

(4) What Was Not Seized.

There can be no possible controversy about the fact that license fee *moneys* in the hands of the Treasurer were not seized by the Custodian.

It is equally certain that the Custodian's requirement or demand did not specifically, or by implication, designate the right of the enemy to contingently recover post bellum compensation for the war time use of his patent property, as seized, and thereby extinguished.

The demand did include the right to sue for past infringement.

The right of licensed American users was unaffected.

American licensees paying their money into the Treasury possessed the contingent right of return if the enemy owner did not sue. The demand was silent as to these payments. There was no seizure of the licensee's right. There could be none.

The People already possessed licensing power. This right also was unaffected by seizure.

It is beyond question, therefore, that the Custodian did not seize, and was not authorized by the Congress to seize, either the license fee moneys in the Treasury, or the right to post bellum compensation granted in Sec. 10 (f) and unrepealed by the November 4, 1918 amendment, or any other.

The Custodian Possessed No Statutory Power to Dispose of Captured Money.

No power over the disposition of license fees is given the President or the Custodian in the Act, as originally enacted, except to order the Treasurer, *after the war,* to repay the same to Americans, if the enemy patent owner did not sue for compensation.

No power was given the Custodian by the amendment of March 28, 1918, to exercise any right or power "as though he were the absolute owner" over *money* paid into the Treasury.

No power to "make any disposition" by sale, or otherwise, of *money* was given him.

"Money" was expressly excepted from the scope of his dispositive powers, original and supplementary.

There is no difference whatsoever between money, as that term is used in the Act, and the right to sue to obtain fixation of the *quantum* of the same. Each, in the contemplation of Congress, was "just compensation," in part, as that term was used in the Constitution.

The license fee payments are not, and never have been enemy moneys. They were paid by Americans. Americans had the legislative assurance of return if no enemy suit was brought after the peace. They were designated as "trust funds."

The President in his Executive Order of February 28, 1918 directed that moneys paid into the Treasury "shall be credited by the Treasurer of the United States to the

Secretary of the Treasury for account of the Alien Property Custodian" (R., f. 142, p. 110).

Public money is money coming into the hands of a public officer by virtue of his office (*Smith* v. *U. S.*, 170 U. S. 372).

Any moneys in the Treasury may be paid out in accordance with an "appropriation" by the Congress (Constitution, Art. I, Sec. 9, Cl. 7). This appropriation was made in the original Trading with the Enemy Act and in Sec. 19 of the Settlement of War Claims Act of 1928, for the enemy's peace time benefit. The enemy could be divested of these rights only by Congressional enactment.

The absence of any Congressional authorization to seize or divest is shown by the amendment, in 1928, of the Act of 1917.

The absence of authority in any officer of the Government between 1917 and 1928, to divest the enemy of this right, is also shown by the 1928 amendment.

No intervening Executive Department action or adjudication of the Judiciary, is superior to the intent of Congress, as shown by the Trading with the Enemy Act as amended by Sec. 19 of the Settlement of War Claims Act of 1928.

From the foregoing, it is clear, beyond contradiction, that the Custodian had no authority to and did not seize the enemy's right to post bellum compensation money. This right was the gift of Congress, revocable at will, but inalienable by any authority except that of Congress, clearly expressed.

We now consider what the Custodian originally assigned to the Foundation.

Assignment of Custodian to Foundation, April 10, 1919.

The Alien Property Custodian, April 10, 1919, for a consideration of $250,000, assigned to the Chemical

Foundation, Inc., "the whole right, title and interest *acquired*" by him, as Alien Property Custodian, to letters patent Nos. 718,340, 680,395 and 868,294, among others, "together with all claims and demands for profits and damages recoverable at law or in equity for the past infringement of said letters patent of the United States against every person, firm, corporation or government except the Government of the United States of America * * * *all as more specifically described and set forth in the requirements or demands relating to said letters patent* * * * without any reservation or qualification whatsoever * * * and subject only to the provisions of a certain release to the United States of America * * * and to the rights of citizens of the United States * * * as set forth in the requirements or demands" (R., ff. 108-111, pp. 83-84).

The Custodian could assign to the Foundation no more than he seized.

The assignment was in the same language as the demand.

Measured by the authorities quoted hereinabove, and in view of the previous capture of use, the Custodian's assignment to the Foundation was a mere license, together with the right to sue for past infringement.

The assignment did not convey the exclusive right or an undivided part thereof to make, use and vend, generally or in a specified territory. That exclusive right was destroyed when the People's Congress passed the Trading with the Enemy Act.

The Foundation could not enjoin Federal Trade Commission licensees from using; could not enjoin them from continuing their payments to the Custodian; could not prosecute them for infringement after the receipt of licenses. The Foundation shared with the President's delegate, the Federal Trade Commission, the

licensing power. The Foundation, therefore, was a mere licensee, no matter what the document of assignment was designated (*Waterman* v. *Mackenzie, supra*).

No cessation of royalty payments by Presidential licensees occurred. No Federal Trade Commission licenses were revoked. No claim was asserted by the Foundation against the moneys in the Treasury. No demand under Sec. 9 of the Act was filed by the Custodian or by the Foundation as owner of the funds held by the Treasurer, or of the right thereto. The Custodian did not cease to receive license fee payments and pay them into the Treasury and did not direct licensees to surrender their licenses and take out new ones from the Foundation. The Custodian was, at the same time, President of the Foundation. No record was made in any Government, or other, office of the transfer of the enemy's right to compensation to the Foundation, or of his right to sue.

On December 3, 1918, the President, by Executive Order, restricted the Federal Trade Commission's previous authority to license, under Sec. 10 (f) to patents *not* seized by the Custodian (R., f. 158, p. 122). He restored the power in his Executive Order of November 25, 1919 as of July 14, 1919 (R., f. 160, p. 124).

Executive Order of February 13, 1920.

Almost one year after the first assignment, the President, on February 13, 1920, signed an Executive Order in which it was recited that "doubt has arisen as to the authority of the said Alien Property Custodian to sell and convey to "The Chemical Foundation, Inc., certain of the said choses in action, rights, interests, benefits under agreements, and rights and claims including *rights to receive moneys by way of royalties or other-*

wise, as compensation for the use of patents, trade marks or trade names" (R., ff. 115-118, pp. 88-90).

The President then authorized the Custodian to sell at private sale to the Foundation, "all choses in action, rights, interests and benefits under agreements and rights and claims of every character and description *which the Alien Property Custodian may seize or may have seized* under the provisions of the 'Trading with the Enemy Act' and the amendments thereto now or hereafter enacted."

The Alien Property Custodian was also authorized "in the case of sales heretofore made by him of any property which he is hereby authorized to sell, but as to which his authority to sell the same under the said orders of February 26, 1919 and April 5, 1919, may be deemed doubtful, to confirm and ratify the said sales by the execution and delivery of a suitable instrument of confirmation."

The President's reason for the foregoing determination and order were "stated in the said orders of Frank L. Polk on the 26th of February, 1919, and the 5th of April, 1919; and in addition thereto, the public interest will be best served by the elimination of any enemy interest adverse to American citizens arising by reason of said choses in action, or rights, interests and benefits under agreements and by the devoting of any payments made by reason of said choses in action or under said agreements by the Chemical Foundation, Inc., to the promotion of the objects stated in its charter." This Executive Order in terms, specifically referred to "rights" which the "Alien Property Custodian *may seize or may have seized*" (R., ff. 116, 119, pp. 89, 90).

This Order operated, merely, on whatever the Custodian had, or might, seize. He had not seized the right to compensation.

Second Assignment of the Custodian Dated March 1, 1921.

Over one year after the President's Executive Order and on March 1, 1921, and two years after the original assignment, the Custodian, "for valuable consideration heretofore received" assigned, sold, set over and transferred to the Foundation "all property including (but not thereby limiting the generality of the foregoing) letters patent, rights under letters patent, applications for letters patent and rights thereunder * * * including all profits and damages recoverable at law or in equity for past infringement with respect to any and all of the foregoing, choses in action, rights, interests, and benefits under agreements, and rights and claims of every character and description with respect to all of the foregoing, *seized by me as Alien Property Custodian, or by my predecessor in office specifically referred to in and assigned by said assignment*, and I do hereby confirm and ratify the sale and assignment of and do hereby sell, assign, transfer and set over to said The Chemical Foundation (Inc.), all choses in action, rights, interests, and benefits under agreements and rights and claims of every character and description growing out of and appurtenant to the ownership of said property including (but not thereby limiting the generality of the foregoing) *rights to receive moneys by way of royalties or otherwise as compensation for the use of patents * * * and all rights, title and interest in and to the choses in action and the funds* referred to in Sec. 10, Subs. (f) of the 'Trading with the Enemy Act,' as amended, *acquired by the Alien Property Custodian by virtue of the seizures* by which they were seized patents, * * * under which a license had theretofore been granted in accordance with the provisions of Sec. 10, subsection (c) of

the Act as amended, all of which property, I, as Alien Property Custodian, from time to time have determined and do hereby determine to relate to the objects and purposes of said The Chemical Foundation (Inc), as expressed and defined in its charter; the intent and purpose of this instrument being to vest in said The Chemical Foundation (Inc.) every right, title, interest, claim and demand, save such as are specifically excepted in and by the said assignments, *acquired by the Alien Property Custodian by virtue of the seizures whereby the said property was seized*" (Italics ours, R., ff. 118-125, pp. 90-96).

No specific authority to the Custodian to transfer "all right, title and interest" in the "funds" in the hands of the Treasurer, appears in the President's Executive Order. No authority in the President to give any such authorization appears in the statutes.

No new, or additional demand, was served by the Custodian, on the Commisioner of Patents, or the Treasurer of the United States, or any other person, after the execution of either of the foregoing documents.

While the Custodian's original assignment to the Foundation was amplified, in the second assignment, the original demand, never served on the Treasurer, was not.

The President's Executive Order and the Custodian's second assignment in no way enlarged the Custodian's original seizure or his original conveyance, nor did either legally effect a conveyance to the Foundation of the ownership of or the right to recover public moneys, or peace time rights of compensation for captured property.

The original seizure was of "every right, title and interest with respect to" the patents. The original assignment was in the terms of the original seizure.

The Executive Order of the President authorized ratification and confirmation of the Custodian's assignment of whatever he had seized or might seize.

The Custodian's second assignment was of whatever he had seized. He amplified the description of the rights, titles and interests which he claimed he had seized, by specification of the right to receive compensation for use.

This leaves the question as it was in the beginning. Did the Congress authorize the seizure of this right and was it seized and conveyed?

No cessation of Presidential licensing activities through the Federal Trade Commission or the Custodian appears in the record No cessation of collections by the Custodian of license fees paid under Federal Trade Commission licenses appears in the record.

If the President's and the Custodian's intention was to substitute for Government licensors, the new citizen owner, this intention is nowhere apparent in existing records.

The intention *of the Custodian* is shown, in terms, in the second assignment.

It is to give the citizen assignee the right to obtain the license fee moneys, after the war, by suit.

But, so far as the record shows, the Custodian was alone in this intent.

The assignments either passed this right which represents the authority to acquire the avails of use permitted by Sovereign interference with granted monopolistic rights, or they do not.

In peace times, measured by laws relating to claims and assignments of patents they would not pass these rights. Else friendly aliens would not enjoy the equal protection of the laws.

It must be held that Congress first, by enactment, took over participation in the right to license and then by

authorization to the Executive Department, took over the right to the proceeds of license.

Taking over the right to license was equivalent to taking over the exclusive right.

The enemy could not license during hostilities.

Yet the Custodian did not transfer the exclusive right to license. The right to license remained in the President so long as Sec. 10 (f) was unrepealed. The President never assigned this right to the Foundation. And he never authorized the Custodian to assign it.

Claims Against the United States.

The enemy's right to compensation was a claim not only against the Presidential licensee, but also against the fund in the Treasury and consequently against the United States. As such it was assignable only in accordance with the Statute,* unless it be considered that the Trading with the Enemy Act as amended to and including November 4, 1918, superseded, as to enemy aliens, all peace time statutes relating to assignments of claims as well as peacetime laws relating to patents.

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*Statute in full:

"All transfers and assignments made of any claim upon the United States or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share, thereof, except as provided in Section 204 of this title, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same. The provisions of this section shall not apply to payments for rent of post office quarters made by postmasters to duly authorized agents of the lessors." (R. S., Sec. 3477; May 27, 1908, c. 206, 35 Stat. 411.)

The post bellum right to compensation was not assignable during the war by the enemy, to any American citizen (Sec. 2, Trading with the Enemy Act).

No officer of the Government can do any act which will take assignments out of the statute (*Hitchcock* v. *United States*, 164 U. S. 227).

The statute has been held to include all specific assignments, in whatever form, of any claim against the United States under a statute or treaty, whether to be presented to one of the executive departments or to be prosecuted in the Court of Claims, and to make every such assignment void unless it has been assented to by the United States. *Ball* v. *Halsell* (Tex. 1898), 161 U. S. 72, 16 S. Ct. 554, 40 L. Ed. 622; *Lopez* v. *U. S.* (1889) 24 Ct. Cl. 84; *Brothers* v. *U. S.* (1917) 52 Ct. Cl. 462, aff'd. (1919) 39 S. Ct. 426, 250 U. S. 88, 63 L. Ed. 859.

The Government speaks and acts only through its officers and agents, and a person dealing with the Government, through such officers, must, at his peril, see that the officers had authority to bind the Government. The authority of such officers must be found in either Constitution or statutory law. (*The Floyd Acceptances*, 74 U. S. [7 Wall.] 666, 676; *U. S.* v. *Alexander*, 110 U. S. 325, 329; *Ex Parte Milligan*, 71 U. S. [4 Wall] 1-133).

Captures, in war, inure to the government and become private property only by its grant. Rights of citizens thereto, "must be derived from acts of Congress and *their scope is not to be enlarged in his favor by construction.*" (*United States* v. *Dewey*, [Manila Prize Cases] 188 U. S. 254).

No one can have any right or interest in any capture except by the grant and permission of the United States (*Officers, etc.* v. *United States* [The Siren] 13 Wall 389; *U. S.* v. *Jonas*, 86 U. S. [19 Wall.] 598).

In the matter of disposition of property captured, the Custodian acting as if he were the owner thereof, we

take it, was not immune from the general laws relating to claims, patents, transfers and assignments, assuming the same not to be in conflict with the provisions of the Trading with the Enemy Act as amended.

Intent of Congress.

That the Congress, at no time, contemplated, or authorized, the seizure or disposition by the Custodian of license fee funds, in the Treasury, or the enemy right thereto, or the enemy's right to compensation for the taking of private property, is further shown by the report to the Senate of its Committee on Finance, submitting the Settlement of War Claims Bill, as follows:

> "The text of the trading with the enemy act as originally enacted, the reports of the committees accompanying the bill, the discussion on the floor of both Houses of Congress, and numerous court decisions under the original act, clearly indicate that the act contemplated sequestration rather than confiscation. The amendment of March 28, 1918, however, broadened the powers of the Alien Property Custodian so as to include the right to manage or sell the property 'as though he were the absolute owner,' and in the so-called *Chemical Foundation* case decided by the Supreme Court on October 11, 1926, the Supreme Court held that when any of the property was sold the former enemy owners were deprived of all rights in the property and in the proceeds derived from the sale. Though it was unnecessary for the purposes of this particular decision, the language of the court is broad enough to be open to the construction that the seizure of property under the authority of the trading with the enemy act, as amended, together with the applicable treaty provisions, deprived the owner of all rights, whether or not the property was sold, and that the property was virtually confiscated.
>
> It is to be noted, however, that even if the property should be held to have been confiscated

(under the dictum of this decision), *in spite of the clear intent of Congress to the contrary*, Congress nevertheless has retained at all times absolute authority over this property and could at any time not only return it to the original owner but declare it to be held for the benefit of and for ultimate return to the original owner. This is apparently just what Congress did under the terms of the Winslow Act in providing that $10,000 of the principal shall be returned to each individual owner, and that thereafter the earnings or interest on the property remaining in the hands of the Alien Property Custodian shall be paid to the owner annually up to the sum of $10,000. So that notwithstanding the undoubted power of Congress to confiscate, reaffirmed in the *Chemical Foundation* case, *Congress not only has refused to exercise that power up to the present time but has clearly by legislation asserted its policy to be the very contrary of confiscation.* (Italics ours) (pp. 12, 13).

* * * * * * *

Of course the Committee is in unanimous accord with the proposition that private property of enemy nationals may not be confiscated, and will not be confiscated, by the United States for the payment of the debts of the enemy government. The United States has always recognized and doubtless always will recognize the sanctity of private property. Despite our recently reaffirmed power to confiscate private property of an enemy national, we have always steadfastly insisted upon according private property full protection in the event of war. We have no reason to assume that this policy will be departed from in the future (p. 17).

* * * * * * *

Under subsection (j) of section 9 of the existing law no patent could be returned which had been sold, licensed, or otherwise disposed of or which was involved in litigation, nor could the proceeds from the sale, license, or other disposition of any such patent be returned. Inasmuch as the *Chemical Foundation* case has now been decided, there is nothing to prevent the return of all patents and such proceeds still held by

the Alien Property Custodian. Subsection (j) of section 9 of the existing law is accordingly amended to comprise two subsections, the first of which (subsec. [j]) provides for the return of patents which have been licensed, subject to any existing license, contract, lien or encumbrance, and the second of which (subsec. [k]) provides for the return of the proceeds received from the sale, license or other disposition. These subsections do not affect the sale to the Chemical Foundation nor the consideration received upon that sale, nor the sales to any other private interests.

Under subsection (f) of section 10 of the existing law the Alien Property Custodian has instituted certain suits as the 'owner' of certain patents. In the event that it should ultimately be held that the suits were properly instituted the amendment proposed by the bill provides that section 9 shall apply to any royalties paid to him. Section 10 of the Trading with the Enemy Act contains the provisions applicable (prior to any seizure by the Alien Property Custodian) to the licensing of patents, etc., prescribes the royalty to be paid, and gives to the owner of the patent the right to file a bill in equity against the licensee at any time before the expiration of one year after July 2, 1921 for the determination and payment of a reasonable royalty." (Report to accompany H. R. 7201, Committee Print (undated) and Report No. 273, 70th Congress, First Session, dated Feb. 9, 1928.)

Reason for Enactment of Section 19 of Settlement of War Claims Act.

The Committee Print of the Report contained the following sentence immediately following the word "royalty."

> "Inasmuch as this section accorded full rights to the 'enemy' owner, no amendment is proposed."

This is inaccurate, and obviously was inserted in the report upon the mistaken assumption that the Alien

Property Custodian had brought suits in every case where licenses were issued (Text of Report, *supra*).

The sentence does not appear in Report No. 273 (Text *supra*).

The Senate's desire however to "accord full rights to the enemy owner" is manifested on the floor of the Senate.

Senator Smoot, Chairman of the Finance Committee, presenting the Conference Report on the bill, containing Section 19, on February 28, 1928, said:

> "The Senate amended subsection (f) of section 10 of the trading with the enemy act so as to provide that suits for reasonable royalties brought either by the original owners of the patents or by the alien property custodian should be considered as having been properly brought for the purposes of this section. It will be noted that subsection (1) of section 9, added by section 13 of the bill, provides that royalties recovered by the alien property custodian in suits instituted by him will be returned under section 9 to the former German owner. The House receded." (Congressional Record, February 28, 1928, p. 3800).

The intent of Congress, set out in the original Trading with the Enemy Act of 1917, is to permit compensation for acquired use (Sec. 10 [f]).

The intent of Congress set out in the Settlement of War Claims Act of 1928 is to permit compensation for use prior to disposition of the patents on April 10, 1919 (Sec. 10 [f] as amended by Sec. 19 of the Settlement of War Claims Act).

During these eleven years, what happened to show any deviation from this intent?

The reply will be the amendment of November 4, 1918 of the Trading with the Enemy Act, permitting the seizure of patents, choses in actions, and rights of every description.

It may be argued that this general language includes the right to compensation. But the right to compensation for the Sovereign's act of confiscation or eminent domain is not *ejusdem generis* with the peace time alien patentee's right and chose in action to enjoin infringement; to sue for damages for unauthorized use, and to resort to the Courts for the collection of unpaid license moneys.

Therefore the Judiciary must by construction read the inclusion of this right into the text of the statute. Else it is not there.

The answer to the latter suggestion lies in the 1928 amendment.

The Congress would not reaffirm the former enemy's right to compensation if that legislative body had ever authorized its seizure and sale.

Summary of the Foregoing.

The presentation of the facts and law, applicable to the case at bar, set out, hereinabove, shows:

(1) That Congress originally intended, and has not changed its intention that the former enemy patentee should recover compensation for the use of his patents. This compensation is confined, by Congress, to use prior to April 10, 1919.

(2) That the Custodian had no power to seize this right of compensation; did not seize the right; and had no power to transfer title to the license fee funds in the Treasury to the Foundation.

(3) That the Foundation never acquired title to the funds in the Treasury by assignment from the Custodian or as an incident of ownership or otherwise; that no assignment by the Custodian, of moneys or right to moneys, in the Treasury may validly be made without express Congressional authorization; and that no valid assignment thereof or claim thereto was made.

(4) That no diversion by Executive or Judicial action of the license fee funds in the Treasury is permissible without, and in strict accordance with, express legislative sanction.

(5) That Sec. 10, subs. (f) of the Trading with the Enemy Act remains unrepealed and unamended since original enactment, except by Sec. 19 of the Settlement of War Claims Act of 1928, which makes disposition of the license fee funds.

II.

The Issues before the District Court.

The issues before the District Court were:

(1) Shall the alien petitioners recover reasonable value for the use and enjoyment of their private patent property prior to April 10, 1919;

(2) Shall the motion of the licensee DuPont to dismiss the bills of the alien petitioners be granted;

(3) Shall the motion of the Custodian to have himself substituted for the alien petitioners, as plaintiff, be granted;

(4) Shall the prayer of the Foundation for judgment, for reasonable value for use and enjoyment of former enemy patent owners' property, under Presidential licenses, subsequent to April 10, 1919 be granted; and

(5) Shall the Treasurer's motion to dismiss the Foundation's bills be granted.

The decrees and orders of the lower Courts declare the *right* of the Foundation to all of the accrued royalties, before and after April 10, 1919, but grant relief, according to the prayer of the bills, for the period only after sale of the patents.

This action leaves the accruals for the period before sale of the patents, undisposed of.

Exactly the reverse condition should exist.

The reasonable compensation for use and enjoyment from October 6, 1917 to April 10, 1919 should be paid, according to the statute, to the alien petitioners and the excess, if any, returned, on the order of the Court, to the licensee who paid the funds.

The Foundation is not now, and never has been, by seizure, assignment or otherwise, entitled to any part of these American moneys, originally and consistently declared by the Congress to be "trust funds" for the enemy owner and the American licensee.

Discussion of Opinion of the District Court.

The District Court was of the opinion that the issue before it was "whether the German plaintiffs have established that they are the respective owners of the several patents within the meaning of Sec. 10 (f) either as originally passed or as amended" (R., f. 180, p. 140).

It is difficult to coincide with this conception of the issue in view of the language of Sec. 19 that "any suit brought within the time limited" shall be considered as having been brought by the owner within the meaning of the Act, so far as such suit relates to royalties prior to sale *if brought by the person who was the owner immediately prior to seizure* and in view of the Court's further statement "that the German plaintiffs were the respective owners of the several patents at the time the license was granted and that they continued to be the owners thereof until the seizure of the patents by the Alien Property Custodian is not disputed" (R., f. 180, p. 140).

The principal issues before the Court were whether Sec. 19 of the Settlement of War Claims Act of 1928 should be given effect, and, recovery by the former enemy owner be permitted, for use prior to sale, in the nature of a reasonable royalty, and further whether any recovery should be permitted to the Chemical Foundation (R., f. 177, p. 137).

For the period before sale there were no suitors before the Court except the alien petitioners. The jurisdictional facts were conceded (R., f. 180, p. 140).

The District Court, denying recovery to the alien petitioners, was of the opinion that the statute empowered the Custodian to seize "royalties"; that he did seize the "accrued royalties" and thereupon became the owner thereof; that by virtue of the statute, the Presidential Executive Orders and the Custodian's assignments, the Foundation became "the owner of the choses in action or right to recover the accrued royalties" (R., ff. 184, 185, pp. 143, 144).

The Court was of the further opinion that there was no sale of "money" to the Foundation by the Custodian; but a sale of "choses in action" (R., f. 188, p. 147).

The Court was of the further opinion that the license fees were *"damages for infringement"* (R., f. 183, p. 142). It was also of the opinion that the moneys paid to the Treasurer *were in no sense "royalties or damages for infringement"* but merely a "surety fund" to which the plaintiff suing for "use and enjoyment" may resort (R., f. 188, p. 147).

The Court's view of Sec. 19 was that unless it "divested the Foundation of the right and revested the Germans therewith" the German plaintiffs had no cause of action (R., f. 185, p. 144).

As to this Act, the Court's views were:

That if the passage of the amendment was in pursuance of Congress' war powers "that fact constitutes

a denial that the amendment was intended to operate upon or with respect to the choses in action here involved; that the "choses in action" having been on April 10, 1919 "sold and passed into the channels of commerce under the express authority of Congress," the war powers of Congress with respect thereto were *functus officio;* that after its sale, the Government no longer held it and it no longer bore the stamp "captured property"; that captured property sold under authority of Congress to American citizens passed from under the powers of Congress touching captured property; that the property to which the Congress reserved the right to make disposition did not include that sold under its authority during the war; that which was sold was choses in action; that these were assignable; that it can not be assumed that the Congress intended to violate the terms of the trust or appropriate to its own use money held in trust; that Congress did not reserve the right to make disposition of these moneys after the war; that on the contrary it expressly excepted these moneys from that reserved power (R., ff. 185, 187, 189, pp. 144-147).

Therefore, the Court was of the opinion that the alien petitioners having had no cause of action at the time their suits were entered or at any time since, their bills should be dismissed (R., f. 189, p. 147).

Although the Foundation had not sued for the royalties accruing before sale, the Court was of the opinion that such election not to sue "did not operate as an assignment of its right to the German plaintiffs or the Custodian" and that the right to *future* royalties passed to the Foundation, by purchase, as an "incident" (R., ff. 185, 189, pp. 144, 147).

The fundamental misconception of the lower Court is that the Congress authorized the Custodian to seize

the enemy's post bellum right to compensation for the taking of private property; that the Custodian, pursuant to this authority, did seize the right and pursuant to further Congressional authority, did transfer the right to the Chemical Foundation, Inc., a private corporation.

From this fundamental misconception flow all the errors of reasoning present in the Court's opinion.

The Congress has stated its intent in Sec. 10 (f) as originally enacted; never repealed and as amended in 1928 in the Settlement of War Claims Act (Sec. 19). This is final. The views and rulings of the Judiciary may not affect this decision.

The Congress has asserted in the amendment of 1928 that it never authorized seizure or disposal of the right to compensation. No language to the contrary appears in any previous enactment. As specific authorization to seize the right is absent from the statute, the Courts imply its existence. This is a law making power not granted to the Judiciary in the Constitution.

Specific seizure of the right is absent from the Custodian's demand. The Custodian acquired only that which the demand specified.

Therefore, in addition to inferring the grant of authority, the Court assumes the seizure by amplifying the language of the document of demand, which it regards as "sufficiently comprehensive" to embrace the seizure of this right.

The supplemental assignment of the Custodian does not change the situation. The language of that assignment is merely of rights acquired by the seizure. The enumeration therein of rights not seized, in the demand, is of no avail. The expression of the Custodian's *intention* to seize or of the President's intention to authorize seizure, not consummated, is ineffective.

Consequently, as the Court's basic premises are wrong, the conclusions therefrom are equally wrong.

That the right to compensation had passed into the channels of commerce is not borne out by the facts. And that Congress was *"functus officio"* as to the money in the Treasury is not borne out by the law. We cannot conceive how Congress can ever be *"functus officio"* in discharging a Constitutional duty.

That Congress reserved no power to dispose of property sold under its authority is a conclusion based upon a non existent fact.

That Congress is consistent in its conception of the trust fund nature of the license fees and had no intention of divesting the Foundation of something it never possessed is also apparent from consideration of the undisputed facts and the unrepealed statutes.

The Court's determination, we think, loses sight of the "non-enemy" nature of the license fee funds; of the absence of Congressional authority to seize the same; of the failure of the Custodian to seize either the enemy's right to sue or the enemy's right to compensation, or the enemy's rights, if any, in the funds in the hands of the Treasurer, and of the further fact that the Custodian had no power of disposition of money, not even of enemy money, directly or indirectly, under guise of transfer of "choses in action" or otherwise.

Specific transfer of the right of suit is absent from the first assignment. Without new demand, it appears, in terms, in the second assignment. Therefore, the Custodian attempts to transfer that which he never seized.

The "chose in action," if it be a chose in action, runs merely to the *quantum*.

The fund was the People's until it was surrendered by the People to the persons the People intended should receive it. These persons, primarily, were enemies; secondarily, American licensees.

The real claim of the Foundation, therefore, is to the fund and to the further right to collect additional funds, by way of reasonable royalty, from the American licensee, under continuations of these licenses, until the expiration of the patents. Such course might be proper under Foundation licenses issued as an incident of ownership; but not under Governmental licenses, encumbering the patent, at the time of seizure and transfer of the patent.

Title to the fund, must pass by the assignment, to make the same effective. This was attempted in the second assignment.

That such attempt to dispose of funds or interest in funds, without Congressional appropriation, is contrary to the Constitution, is obvious.

The Foundation's further position, therefore, is that as "owner" it fits into the *designatio personarum* of the Congress set out in Sec. 10 (f) of the Trading with the Enemy Act, authorized, after the war, to sue for compensation for war time use, by Americans, of enemy patents. That Congress contemplated in the Act no devolution of title from enemy patentees to American beneficiaries of Congressional reparation for the taking of private property, is apparent from the text of the Act as amended.

During the war no American could accept an assignment from the enemy patentee, even of his patent, without "trading with the enemy" (Sec. 3).

In no Act of Congress is there any indication of an intention to permit the enemy or the Executive or Judicial Departments of the Government to dispose of indemnity or compensation for the taking of private property, to citizens of the United States.

In recognition of the laws of nations, the *jus belli*; the Rules of Land Warfare and the traditions of the

country, the Congress determined to compensate enemy patentees for the use of their private property found in America at the outbreak of hostilities, and existing here under the assurance and protection of American laws.

This determination is expressed not only in the original Trading with the Enemy Act but also in the Winslow Acts and the Settlement of War Claims Act of 1928 and in the reports of the Congressional Committees handling this legislation.

Only the action of an official of the Executive Department interferes with the operation of the Congressional policy. Such action must yield to the superior legislative will.

No hurt to Americans arises from an execution of the Congressional policy.

The American assignee of the patent, for the life thereof, may exclude the former enemy owner from using, even in peace times, his own inventions. This is a post bellum penalty. Further it may profit from its licensing since 1919 of the patents to Americans.

It might have persuaded all Presidential licensees to surrender their governmental licenses and take licenses from it.

It is deprived of no right it ever possessed, or ever asserted, if the former enemy patentee receives the Presidential license fees accruing before sale.

It is deprived of no right it ever possessed if the fee accruals, after fair compensation to the alien owner, are returned to the American who paid them. The Foundation could not sue any Presidential licensee for infringement, after it became the Custodian's assignee. Its assignment was subject to these existing and outstanding licenses.

Its position is that by Congressional benevolence and Executive grant, the compensatory funds, in the Treasury, for private property appropriation in war time, belong to it, as an incident of patent ownership and by *executive* assignment, and that its rights are superior to the statutory rights of the American licensee and the former enemy.

The Constitution is clear that the Congress has power to dispose of and make all needful rules and regulations respecting the property of the United States and nothing in the Constitution shall be so construed as to *prejudice any claims of the United States* (Article IV, Sec. 3).

The license fee funds in the possession of the Treasurer are trust moneys, until they are disposed of as Congress directs. The right to possession of these moneys is in the United States. The Executive and Judicial departments of the United States must dispose of the same in accordance with the will of the Congress, which has authority to "make all laws which shall be necessary and proper for carrying into execution" the power of Congress to "make rules concerning captures on land and water" (Article I, sub. 8).

As to this disposition the Congress has spoken. The Foundation asserts its right to contravene the Constitutional and statutory mandate.

Discussion of Opinion of the Circuit Court of Appeals.

The Circuit Court of Appeals was of the opinion that under proper statutory authorization the words employed by the Custodian, in his seizure, to wit: "every right, title and interest with respect to" the patents included "royalties" (R., f. 255, p. 189).

The Court was of the further opinion that the Custodian specifically sold to the Foundation the "rights to receive moneys by way of royalties or otherwise as compensation for the use of patents" (R., f. 258, p. 194).

The Court was of the further opinion that the alien petitioners were not the owners of the patents or the royalties, at the time of suit (1922) unless the amendment under consideration "ruthlessly divested the party who acquired ownership by capture, or the party who later acquired ownership by purchase from the captor, of his ownership in the royalties and revested it in the original owners" (R., f. 256, p. 190).

The Court found "no statute whereby the Congress divested or seemingly intended to divest a vendee of ownership in property lawfully seized and lawfully conveyed and revest it in the Custodian" (R., f. 258, p. 194).

That Congress, in Sec. 10 (f) of the Trading with the Enemy Act, as originally enacted, had no intention of divesting even the enemy patentee of his entire ownership of his patent, is perfectly apparent.

That the Congress, in this statute, had no intention of divesting the emeny of his right to compensation for the property rights captured is equally apparent.

That Congress, in all of its subsequent amendments authorized capture only of *existing* rights useful to the American People in the prosecution of a war, is equally obvious.

That Congress, *in no legislation* has authorized confiscation of post bellum private rights, conferred upon former enemies, is also clear.

That Congress in no enactment has provided for post war penalization, indemnities, reparations, levies,

contributions or forfeitures affecting former enemy nationals is quite beyond controversy.

That Congress in both war and peace legislation has never had any intention of dedicating trust moneys, accruing during the war period, to private uses, after the war, is absolutely certain.

The appropriation of rights, belonging either to citizen or alien, maturing only after the war, is the taking of private property without due process of law.

The confiscatory rights of a belligerent cease and determine upon the resumption of the belligerent's status of peace amity and concord.

We fail to observe any reference by the learned Court to any statute specifically authorizing the seizure of post bellum compensation.

If the authority in the seizing official is absent his act of seizure is a nullity. So would be his act of assignment and conveyance of that which he did not seize.

The Court must *infer* the existence both of authority and seizure. General terms in the statute and the seizure are resorted to, for this purpose.

Congress has settled the error of these assumptions by its statute of March 10, 1928, settling war claims, in accordance with its Constitutional and reserved power. Its committees, in addition, leave the matter of intent, in no doubt.

Assuming that the United States, in 1917, by the exercise of the right of eminent domain, appropriated the patent rights of an American citizen, or an alien neutral, and assigned the same together with "every right, title and interest with respect thereto" to an American corporation, there can be no doubt that the right to compensation for the taking would not pass under the assignment. Otherwise there would be no

compliance with the Constitutional restriction upon private property taking without compensation.

This argument applies equally to the peacetime rights of former enemy aliens.

III.

Consideration of "Choses in Action."

On October 6, 1917, after the Trading with the Enemy Act became effective, the only exercisable chose in action possessed by the enemy patentee was that given by the statute to prosecute, by attorney in fact, despite the existence of a state of war, non-licensee infringers (Subd. (d) statute).

So long as the war persisted, that was the only "chose in action" the enemy *qua* enemy possessed.

That "chose in action" was specifically captured in the language of the Custodian's seizure and demand, recorded in the Patent Office. The validity of that part of the seizure is not now before the Court.

After the war, when his belligerent nationality had been converted by the Proclamation of Peace into his original peaceful status, then and there, but not before, the Congressional assurance of proper compensation ripened into a "right" inuring to the former patentee and he became possessed of a peace time "chose in action" to resort to the Judiciary for the fixation of *quantum* for the "rights" he had been deprived of forever.

Logic compels, therefore, the irresistible conclusion, from these inescapable facts, that the Custodian in his after-thought assignment endeavored to assign, as a capture, that intangible right, conceived, it is true, in the Congressional imagination, but having no existence

except in the realm of legalistic fiction, until the cessation of an undetermined, inexact, indefinite period of hostilities.

The Trading with the Enemy Act defined the status of "enemies" and of their capturable property and possessory rights, as of the date the same became effective. It carried no authorization to capture rights accruing only after the war ended. The capture powers of the Custodian ended upon the declaration of Peace. Confiscation of alien or domestic property is no peace time policy of the American Government. War time executive action effective as confiscation *in futuro*, on peace time property, or property rights, has been, and still is, absent from legislative sanction of the American Congress since the birth of the Republic.

The enemy's "right" acquired existence only upon the instant the Custodian's seizure powers expired. The President's Proclamation of Peace gave life to the embryo "right" and placed, simultaneously, the quietus upon the Custodian's seizure activity. The Proclamation changed the "enemy" into friend and removed the rights of that new "friend" from the jurisdiction of an official whose war power of capture terminated. There could be no peace time seizure, *ex post facto* as there could be none in war time, *nunc pro tunc*.

No power was vested in the Custodian to refund any part of the purchase price of enemy property sold by him, from trust or enemy moneys, directly or indirectly. Nor was power given him to assign compensatory financial advantages in diminution of the original cost to the transferee. No authority lay in him to make a gift of trust or enemy or American licensee moneys to the assignee of enemy patents. To hold the contrary would render nugatory the still existing pro-

visions, unrepealed, of Sec. 10, subsec. (f) as amended by the Statute under consideration.

No difference exists between the right to compensation for captured property, given in the statute, and the right to sue for the fixation of the *quantum* of such compensation. One is the right to compensation; the other is the right to pursue the statutory method provided to obtain it. Transfer of the right to sue is transfer of the right to recover.

The lower Courts' decision places the assignee, by money payment, into the identity of the enemy to be benefited by the taking for war purposes.

The Custodian's assignee obtains compensation for citizens' use of the enemy's patents. It may resort to the fund paid *before* it was the Custodian's assignee. Not in existence before 1919, the Court declares it entitled to benefits arising in 1917 and 1918.

Nowhere in the report of the Alien Property Custodian or in the reports of the hearings before Congress, is there any suggestion of capture of the right to compensation nor of any desire or intention to authorize the assignment of this right to private persons.

Without Congressional authorization, the Executive Department has power neither to create a claim against trust funds in possession of the United States nor to dedicate moneys in the Treasury to public or private purposes.

The actions of officials of the Executive Department must be scrutinized now in the light of the Settlement of War Claims Act.

Authority for their war time action must exist, if at all, in the enactments of Congress.

The Treaty of Peace, in 1921, permitted the People to foreclose the enemy, if the People so desired, from seeking this compensation.

The Settlement of War Claims Act of 1928 expressed the Congressional intent *not* to *deny* to the enemy non-combatant the right to compensation for the use of his appropriated inventions, for the period from October 6, 1917 to April 10, 1919.

IV.

Sec. 19 of the Settlement of War Claims Act of 1928, amending Subs. (f), Sec. 10 of the Trading with the Enemy Act, is a valid exercise by Congress of its Constitutional powers.

The power to declare war and to "make rules and regulations concerning captures on land and water" is vested by the People of the United States of America in the terms of the Constitution, in the Congress (Art. I, Sec. 8, Clause 10).

So also is the power to make all needful rules and regulations respecting property belonging to the United States (Art. I, Sec. 3, Clause 2). Also the power to make all laws necessary and proper for carrying into execution the powers vested by the Constitution in the Government (Art. I, Sec. 8, Clause 17).

Mr. Justice Miller has written that "unquestionably it was within the power of Congress to provide a full code of procedure" for the disposition of captured property (*Tyler* v. *DeFrees*, 11 Wall. 344).

This Court has upheld the Constitutionality of the Trading with the Enemy Act in *White* v. *Mechanics Securities Corp.*, 269 U. S. 300; *Stoehr* v. *Wallace*, 255 U. S. 242; *Commercial Trust Co.* v. *Miller*, 262 U. S. 57 and *Sanchez* v. *Beering*, 270 U. S. 227. In the latter

case, Mr. Justice McReynolds said: "The duly expressed will of Congress when proceeding within its power is the supreme law of the land."

From the foregoing, it seems beyond question that the Trading with the Enemy Act and Sec. 19 of the Settlement of War Claims Act of 1928 are expressions of the Congressional power, under the Constitution, to regulate captures on land and water.

V.

Contention as to Unconstitutionality.

Contention of DuPont.

Both DuPont and the Foundation raised the issue of constitutionality below. DuPont was of the opinion that the operation of the statute "constitutes an interference with vested rights in contravention of the Fifth Amendmen to the Constitution."

DuPont contended that the right to compensation for the use of the patents had passed by assignment to the Foundation. That as the Foundation, as owner, within one year after the war, had brought no suit for the recovery for use and enjoyment, prior to April 10, 1919 "the right to institute suit was forever barred"; and that, therefore, all rights with respect to royalties for this period, "became a vested property right" of DuPont. Further, that Congress could not, "by subsequent legislation, invade such vested property rights" and deprive DuPont "of its property without due process of law." The quoted matter is from DuPont's brief in the District Court (pp. 37-45).

In its brief submitted to this Court in opposition to the issuance of writs of certiorari, DuPont contends that

the act "would by reinstating a liability which had become extinguished deprive the licensee (DuPont) of its property without due process of law in contravention of the Fifth Amendment" (pp. 21-22).

The "rights" which DuPont contends this legislation takes from it are exceedingly vague and nebulous.

No money is taken.

In its District Court brief, DuPont says: "It does not seem to be disputed" that DuPont "did not pay to the Alien Property Custodian, or to any other person, any royalties for the use of the patents here involved prior to April 10, 1919" (Brief, p. 34; R., p. 43, f. 51).

No tangible property is taken. The intangible "vested rights" accordingly, therefore, must be (1) immunity from suit by the former alien enemy; (2) right in a statute of limitations; (3) reinstatement of extinguished liability and (4) property rights "with respect to royalties" for the period prior to sale.

Inquiry, naturally, should be directed to the questions of whether any of the foregoing were either "rights" or "vested."

First, as to immunity from suit.

DuPont took its license and paid its money for use and enjoyment of enemy patents with the statute on the books giving the enemy owner the right to sue it after the war and obtain a continuance of royalty payments or a cancellation of the license. Also they might have an examination of DuPont's books and a scrutiny of sales and profits, and a determination as to liability to pay reasonable compensation for use and enjoyment of the alien petitioners' inventions during this period. This regardless of any rate of license fee fixed by the Federal Trade Commission. Also the alien petitioners might examine the "extent of use"

which the statute required DuPont to disclose to the Federal Trade Commission (Subd. [d], statute *supra*).

The post bellum suit was the only suit the *enemy* owner could bring against DuPont (subd. [d]).

The former enemy did bring this suit. He brought it within the statutory period, and while the enabling statute stood unrepealed. The operation of this statute, says DuPont, was rendered nugatory by the action, not of the legislative department, but of the executive department. The executive, he contends, took away what the legislature had granted the enemy and substituted a new party, as owner, to whom DuPont had the right to look for suit. Therefore, the legislature's enactment no longer had any force or effect.

This argument is founded on the misconception that Congress authorized the seizure and disposition of the post bellum right to compensation for Sovereign seizure and that the same was seized and transferred to the Foundation.

Secondly, as to DuPont's "vested right" to the defense of the Statute of Limitations.

Obviously DuPont took his license with the clear understanding that some "owner" had the right to sue. Congress originally enacted that the enemy owner had this right. The amendment reiterates the right in the former enemy.

Thirdly, as to "reinstatement of extinguished liability."

This is a contention that from July 1, 1922, one year after the Peace, no person could sue him, the Foundation having failed to do so, and that if he had paid moneys as royalties for the period before sale, he would be entitled to the return of the same.

Very properly he might contend, but does not, that the Court's present decree deprives him of the right

to get his money back, in excess of reasonable royalty for use prior to April 10, 1919, in that the Court has permitted an "owner" never contemplated by the statute to sue him.

His liability to pay royalty was never extinguished by the Congress and thereafter reinstated. The suit brought within the statutory period was validated.

Fourthly, DuPont never has possessed and does not now possess any "vested" rights in royalties accruing in any period. He had the statutory right as a Congressional *cestui que trust* to the return of his money paid as license fees, if the enemy owner did not sue within one year after the Peace. This the former enemy did. Undoubtedly, DuPont has, now, the right to the return of any excess over a reasonable royalty for the period prior to April 10, 1919. It would seem clear, from the foregoing, that the statute under consideration, viewed in the light of the consistent policy of Congress has deprived DuPont of no property or right to property or "vested right" of any kind whatsoever.

Contention of the Foundation.

The Foundation in its briefs below contended that the statute is unconstitutional (District Court Brief, pp. 28-31; Circuit Court of Appeals Brief, pp. 36-44).

In the District Court brief it was said that:

> "If, as the German plaintiffs contend, it created, or reinstated, for their benefit, causes of action which had either never existed or had ceased to exist, it is unconstitutional. While Congress may, in some cases, by removing the bar of a statute of limitations, revive a bar to claim which has an independent origin and is subject to no other defect, it cannot revive such a claim when the limitation was a part or term

of the original right, and that right was created only by the statute which imposed the limitation.

* * * * * * *

The Foundation when it bought the property, and the licensee when it took out the license, each entered into a contract with the United States among the terms of which the provisions of the existing law were an essential part. The Foundation bought and sued in reliance on the statutory provision that an 'owner' (meaning an owner of the patent at the time of suit) and only such an owner could use. The licensee entered on its vast undertaking in reliance on the statutory provisions which limited its liability to one suit only. Congress could not thereafter take away part of the rights which the Foundation had bought. Neither could it subject the licensee to suit by other plaintiffs.

If construable in such manner as to revivify the German suits the amendment would also be objectionable as a legislative usurpation of judicial functions."

In the Circuit Court of Appeals the brief set out that:

"We have already shown, as we believe, that nothing ever vested in the German owners except a right which must necessarily end with a transfer of ownership of the patents, and that that right passed to the Custodian both by a separate act of seizure, and also by the mere seizure of the patents, which took from the Germans and gave to the Custodian the indispensable qualification as 'owner of the patent,' without which the right could not be held. Each of these separate sources of the Foundation's title—the seizure of the rights themselves, and the patent-seizure—operated alike on the rights for all periods, without distinction. The separate seiz-

ure took every right the Germans had 'with respect to' the patents, past and future, without any exception of those already accrued. The patent-seizure took from them the whole of their qualification to sue, whether for past or future use and enjoyment."

"While we contend that in fact that fund arose out of use and enjoyment after assignment, it is plain that, however, it arose, the Foundation, as the sole possible plaintiff qualified as 'owner of the patents' to sue, is entitled to the benefit, as security, of the whole fund provided to secure the decree in the suit so brought. This is a substantial right, whcih was fully vested in the Foundation long before the 1928 Amendment was enacted. It is property of which the owner cannot under the Fifth Amendment be deprived without due process of law. The Foundation is therefore directly affected by and interested in the question of the statute's constitutionality."

These contentions are that the Congress usurped judicial functions; that the right to compensation passed not only by direct and express transfer but also as an incident of ownership and that the right in the Foundation to look to the funds as "security" is a vested property right.

Disposition of war captures is a constitutional power of Congress, belonging not to the Judiciary. The right to compensation for capture does not pass as an incident of ownership to transferees of patents. That this compensatory right was neither captured nor transferred has hereinbefore been demonstrated. That the Foundation never acquired and now possesses no "vested" or other right in the funds, as security or otherwise, is amply clear from the foregoing.

It is firmly established that the Constitutionality of a statute may not be attacked by one whose rights are

not affected by the operation of the statute. It is incumbent upon litigants to show that they are within the class with respect to which a law is unconstitutional and that the alleged unconstitutional feature injures him and so operates as to deprive him of rights protected by the Constitution. (*Hatch* v. *Reardon*, 204 U. S. 152, 161; *Southern Railway* v. *King*, 217 U. S. 524, 534; *Standard Rock Food Co.* v. *Wright*, 225 U. S. 540, 550; *Plymouth Coal Co.* v. *Pennsylvania*, 232 U. S. 531, 544,—[cited in *Louisville & Nashville R. R. Co.* v. *Finn*, 235 U. S. 601]).

It is an axiom in our jurisprudence that an Act of Congress is not to be pronounced unconstitutional unless the defect of power to pass it is so clear as to admit of no doubt. Every doubt is to be resolved in favor of the validity of the law. (*U. S.* v. *Rhodes*, 1 Abb. U. S. 49; 4 Wheat, 316, 9 Wheat 1; *Hepburn* v. *Griswold*, 75 U. S. [8 Wall.] 603-607; *Fairbank* v. *United States*, 181 U. S. 285; *The Mayor* v. *Cooper*, 73 U. S. [6 Wall.] 247-251).

It is not the duty of the Judiciary to make or modify the law (*Bank* v. *Sherman*, 101 U. S. 403, 406).

But to give effect to the will of the law-making power when expressed within the limits of the Constitution. (*Barney* v. *Latham*, 103 U. S. 205, 212).

We quote one further observation of the Foundation in its District Court brief to the effect that "However sweeping the power of Congress to settle war disputes may be, it cannot include the power to settle them long after the war is over, by confiscating the property of American citizens" (p. 40).

Thus does the beneficiary of confiscation designate the Congressional denial of intent to confiscate.

Views of the Lower Courts on Constitutionality of Sec. 19.

The remarkable feature of the decisions of each of the lower Courts is that while failing to give effect to the provisions of Sec. 19 of the Settlement of War Claims Act of 1928, neither Court declares the same to be unconstitutional.

The Circuit Court of Appeals said:

> "The right to the accrued royalties in whomsoever vested, is a chose in action; a chose in action is property; and an act which takes property from one person and gives it to another without legal procedure to determine their rights and without compensation is a deprivation of property without due process of law and is violative of the Fifth Amendment to the Constitution. Subscribing to the reasoning of the learned trial judge, we hold that the Amendment of 1928, valid and useful perhaps in many situations, did not restore to the German plaintiffs ownership of either the patents or the royalties. It follows that they did not own the royalties when they filed their bills—the critical time under the statute supplying the remedy—and that, in consequence, the decrees dismissing their suits must be affirmed * * *. We subscribe to the reasoning of the learned trial judge on the main issue and the related issues of these cases and direct that the decrees be in all respects affirmed."

And the Court then rules that the alien petitioners did not own the royalties when they filed their bills (in 1922) "the critical time under the statute supplying the remedy."

The "critical time" under the amended statute which is the criterion of ownership is "immediately before seizure" (Statute, *supra*).

The District Court held:

> "The German plaintiffs are without cause of action and without right to recover from the defendant the accrued royalties unless by the amendment of March 10, 1928 to Sec. 10 (f) of the Trading with the Enemy Act Congress divested the Chemical Foundation of its right and revested the Germans therewith. That right is a chose in action. A chose in action is property. The fifth amendment to the Constitution of the United States, providing that no person shall be deprived of his property without due process of law, denies to the Congress power to transfer property from one to another directly or indirectly. *Ochoa* v. *Hernandez*, 230 U. S. 139, *Gilman* v. *Tucker*, 128 N. Y. 190, 28 N. E. 1040. In the former of these cases the Supreme Court, holding that even if the commanding officer in territory occupied by military forces of the United States has all the legislative power as to such territory possessed by Congress, he is still subject, as Congress is, to the provisions of the fifth amendment and cannot by military orders deprive persons of their property without due process of law, said, p. 161:
>
> 'Whatever else may be uncertain about the definition of the term "due process of law," all authorities agree that it inhibits the taking of one man's property and giving it to another, contrary to settled usages and modes of procedure, and without notice or an opportunity for a hearing.'"

And the Court then holds that the right to sue for royalties having been, under the authority of Congress, seized and sold, Congress was "*functus officio*" as to this chose in action.

Unconstitutionality is referred to merely *en passant*. More than once, below, the distinguished Mr. Cooley's

observation that "there is no rule or principle known to our system under which private property can be taken from one person and transferred to another for the private use and benefit of such other person, whether by general law or by special enactment" (Constitutional Limitations [8th Ed.] Vol. 2, p. 744) was referred to. We subscribe to this statement.

VI.

Sec. 19, as aforesaid, is part of the supreme law of the land, binding on the District Court and the Circuit Court of Appeals.

The District Court and the Circuit Court of Appeals of the various Circuits are creations of the Congress under their power to ordain and establish Courts inferior to the Supreme Court (Article III, Sec. 1).

The judicial power is limited by Article VI, Section 3 of the Constitution which provides that the Constitution, and the laws made by the Congress pursuant therto, with treaties, shall be the supreme law of the land, binding on the judges in every state, anything in the Constitution to the contrary notwithstanding.

Judicial officers are bound by oath to support the Constitution (Article VI, Sec. 3).

Federal Courts have no jurisdiction except that conferred by the Federal Constitution or federal statutes. (*Rice* v. *Minnesota & N. W. R. R. Co.*, 1 Black 358, 374; *Kempe* v. *Kennedy*, 3 Cranch 173).

The inferior courts are "mere creatures of Congress" and possess "no powers except those specifically granted to them by an Act of Congress." (*Lewis Publ. Co.* v. *Wyman*, 152 Fed. 200; *Stevenson* v. *Fain*, 195 U. S. 165).

Congress has "specifically granted" no power to the inferior judiciary to override or disregard an Act of Congress.

The provisions of an act of Congress passed in the exercise of its Constitutional authority, if clear and explicit, must be upheld by the Courts. (*Fong Yue Ting* v. *U. S.*, 149 U. S. 720).

It is clear from the foregoing that Sec. 19 of the Settlement of War Claims Act of 1928 is part of the supreme law of the land, binding upon the judges in every state.

VII.

Conclusion.

The basic inquiry, in this case, is: Did the Congress authorize the seizure and sale of the enemy's right to compensation for the use, under Sovereign authority, of his private property; and pursuant to such authority did the Custodian seize and sell this right to the Foundation?

The lower Courts have resolved this question in the affirmative.

Affirmance of the decrees and orders of the lower Courts necessitates the finding that the Congress intended to authorize the appropriation of the enemy's statutory right to compensation for use of patents and its disposition by the Custodian.

It necessitates further the finding that Congress wished to deviate, as to enemies, from the Constitutional provision that Private Property shall not be taken without just compensation.

It necessitates the further finding that the Congress intended to disregard the war conduct principle, previously enunciated, that "Private property can not be confiscated." (H. R. Art. XLVI, par. 2; Sec. 336, Ch. 14, Rules of Land Warfare, promulgated by the Chief of Staff, U. S. A., April 25, 1914.)

The Congress authorized the capture of patent "rights of every description" (Amendment of November 4, 1918). The Custodian conveyed every "right, title and interest" with respect to the patents seized (R., f. 108, p. 83).

The lower Courts have construed these general terms to include the capture and the disposition of the right to compensation. They consider the right to compensation to be a "chose in action" properly capturable and properly captured and properly conveyed to a private citizen. They disregard the resultant fact that the "chose in action" appertained to "money" in the Treasury over which the Custodian had no statutory power of disposition.

The obligation of the contract between the United States of America and the patentee is destroyed. The statutory assurance of seventeen year monopoly is set aside.

The Congressional prohibition as to assignment of claims is passed over. The Constitutional inhibition against private property taking is frustrated.

So long as the American Constitution prevails, there is no question about the inability of Government to alienate by confiscation the citizen's right to just compensation for private property taken. There should be none as to the alien enemy's.

The Custodian's assignment to the Foundation transferred every right of property the alien patentee possessed at the outbreak of hostilities. The lower Courts now add thereto the proceeds of compulsory licensing.

The Foundation becomes the beneficiary of the "trust funds." The original rights of both enemy and licensee as *cestuis* disappear.

The Government took over the alien patentee's licensing power before the Foundation became the owner of the patent.

For this period's avails (October 6, 1917 to April 10, 1919) of use the Foundation now becomes the beneficiary by judicial decree.

This constitutes, in effect, confiscation of the statutory grant of compensation for confiscation.

The intent of Congress, in the Settlement of War Claims Act of 1928 has been declared by the Finance Committee of the Senate of the 70th Congress (Report No. 273) to be the very antithesis of confiscation, not only of the right to compensation for captured property, but also of the captured property itself.

The view of the Courts is that the Congress twice contemplated and accomplished confiscation. First in confiscating the right to license use of the patents. Second, in confiscating the right to compensation.

The ascertainable intent of the law makers must prevail.

In view of all of which it is respectfully submitted that the orders of the Circuit Court of Appeals, Third Circuit, and the decrees and orders of the District Court for the District of Delaware (except the order of the Circuit Court of Appeals, affirming the order of the District Court denying the motion of the Alien Property Custodian to be substituted as plaintiff for petitioners) should be reversed and the cause remanded for appropriate proceedings.

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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930

No. 179

FARBWERKE vormals MEISTER LUCIUS & BRUNING, DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm. ROESSLER, and BADISCHE-ANILIN & SODA-FABRIK,

Petitioners,

against

CHEMICAL FOUNDATION, INC.; E. I. duPONT deNEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,

Respondents.

No. 180

FARBWERKE vormals MEISTER LUCIUS & BRUNING,

Petitioner,

against

E. I. duPONT deNEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,

Respondents.

No. 181

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Petitioner,

against

E. I. duPONT deNEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,

Respondents.

No. 182

BADISCHE-ANILIN & SODA-FABRIK,

Petitioner,

against

E. I. duPONT deNEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,

Respondents.

REPLY BRIEF OF PETITIONER FARBWERKE VORMALS MEISTER LUCIUS & BRUNING.

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No. 182

REPLY BRIEF OF PETITIONER FARBWERKE VORMALS MEISTER LUCIUS & BRUNING.

This brief will be confined to a consideration (1) of the effect of the decision of *May* v. *Saginaw County*, 32 Fed. 629 relied on by respondents to support the instrument of seizure as effecting a seizure of the right to accrued royalties as well as the patents, and (2) of certain executive orders and other instruments relied on by respondents for the same purpose. Neither of these questions were discussed by way of anticipation in petitioner's opening brief. In respect of the first it is the position of petitioner (1) that *May* v. *Saginaw County, supra*, which is not only opposed to the authorities cited in our opening brief, but has never been followed in any subsequent case, is not expressive of the existing law, and (2) that even if expressive of the existing rule it is inapplicable in the present case because, by the express seizure of damages for past infringements and the omission expressly to seize or to make reference to accrued royalties, the latter were excluded. In respect of the second, the position of the petitioners is that to the extent, if any, that executive orders and other instruments may be considered, such documents as a whole, so far from supporting the contentions of the respondent, support those of the petitioner.

1. THE INSTRUMENT OF SEIZURE WAS INSUFFICIENT TO SEIZE THE ACCRUED ROYALTIES. MAY V. SAGINAW COUNTY IS NOT EXPRESSIVE OF THE RULE ON THE SUBJECT, AND IF SO, IS NOT APPLICABLE.

In *May* v. *Saginaw County, supra*, Brown, then District Judge, criticized both *May* v. *Juneau*, 30 Fed. 241, which involved precisely the same assignment therein

held by Judge Bunn to be insufficient for the purpose in question and *Dibble* v. *Augur*, 7 Blatch. 86 (91), Fed. Cas. No. 3879.*

May v. *Saginaw County, supra,* has never been cited or followed on the point in question in any other case. On the other hand, *May* v. *Juneau, supra,* and *Dibble* v. *Augur, supra,* have been cited in other cases, including cases in this Court, as expressive of the rule governing the assignment of patents.

In *United States* v. *Loughrey,* 172 U. S. 206 (211-212) the Court said:

> "Neither a deed of land nor an assignment of a patent for an invention carries with it a right of action for prior trespasses or infringements. Such rights of action are, it is true, now assignable by the statutes of most of the States, but they only pass with a conveyance of the property itself where the language is clear and explicit to that effect," citing among other cases *Dibble* v. *Augur, supra,* and *May* v. *Juneau, supra.*

The opinion in the above case was by Mr. Justice Brown and the citation therein of these two cases, both of

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*The assignment in *May* v. *Juneau, supra,* and in *May* v. *Saginaw County,* was of "all the right, title, interest, claims, and demands whatsoever which the estate of said Edwin May, deceased, has in, to, by, under, and through the said improvements, and the letters patent and extensions thereof therefor aforesaid; * * *" The assignment in *Dibble* v. *Augur* was of all "right, title, interest, claim or demand whatsoever in, to or under" the patent.

It is true, as pointed out in brief of respondent duPont that in *Dibble* v. *Augur,* Judge Blatchford called attention to a second instrument, whereby damages for past infringements were expressly reserved by the assignor, but the quotation from his opinion (our opening brief, pp. 24-25) shows that the Court held the words themselves to be insufficient in themselves to pass title to such claims irrespective of the second instrument construed therewith.

which had been criticized by him in his prior decision, as District Judge, in *May* v. *Saginaw County, supra,* as authority for the rule stated, and the failure to refer to that case at all is significant both in respect of his later views and of the views of the Court as a whole.

In *United States* v. *Loughrey,* which was a case of past trespasses on real estate committed prior to the plaintiff's ownership the Court thus treats such a case and one for past damages for patent infringment as similar in character. The decision in *May* v. *Juneau, supra,* is in part based upon the same assumption, Judge Bunn pointing out that the words of the assignment were no more sufficient to convey the right to damages for past infringement than would the conveyance of a farm be sufficient to convey the right to sue for trespasses committed upon the land previous thereto. In the quotation from the opinion of the late Chief Justice in *Superior Drill Company* v. *Nye Manufacturing Co.,* 98 Fed. 738, cited at page 25 of our opening brief, claims for damages for past infringements are likewise described as "claims for damages for past trespasses" which "do not pass unless specifically assigned". As stated in our opening brief, *Dibble* v. *Augur,* is likewise cited in the opinion of the late Chief Justice in *Crown Die & Tool Company* v. *Nye Tool & Machinery Works,* 261 U. S. 24, in which opinion in respect of another decision by Judge Blatchford, the statement that he "subsequently became a Justice of this Court and had great experience in the administration of the patent law" is significant as to the authority to be given to his decisions in respect of such matters.

Under the rule stated in *United States* v. *Loughrey,* the right to past damages passes with a conveyance of

the patent, itself, only "where the language is clear and explicit to that effect". To the same effect are the authorities cited in our opening brief (p. 21). That the conveyance of a patent and of "all right, title and interest with respect thereto" is not language clear and explicit in terms and does not operate to convey the right to recover for past trespasses on the patent growing out of infringement any more than a conveyance of real estate, together with all right, title and interest with respect thereto would assign the right to recover for past trespasses thereon would appear to be clear. The precise point in question has never apparently been decided by this Court. In all cases in which it has arisen, however, with the exception of *May* v. *Saginaw County* the assignment of a patent and of all right, title and interest therein has been held insufficient to convey the right to recover past damages for infringement. *Dibble* v. *Augur, supra, May* v. *Juneau, supra, Jones* v. *Berger,* 58 Fed. 1006, *Herman* v. *Detroit Shipbuilding Company,* 295 Fed. 423, and the rule of these cases appears to have the implied approval of this Court through the citations above noted.

In any event, in the face of these authorities, the assignment of a patent, together with all right, title and interest with respect thereto would at least leave in doubt the question as to whether damages for past infringement had been likewise assigned and the instrument of seizure, without doubt, specifically provided for the seizure of such rights in order to remove such uncertainty. Even if it should be held that, contrary to the weight of authority, the rule of *May* v. *Saginaw County, supra,* should govern, by the express seizure of the right to damages

for past infringement and the omission expressly to seize or to mention accrued royalties under presidential licenses, the latter were excluded for the reasons set forth in our opening brief. (pp. 22-28) In addition to the arguments therein made, reference should be made to the familiar rule that in construing an instrument none of its words are to be regarded as superfluous or redundant. If the general words employed were sufficient to seize the right to accrued royalties they were sufficient to seize the right to past damages and the express mention thereof was redundant and superfluous. Moreover, unlike some of the later instruments referred to by respondents, the phrase "including past damages," etc. following the general words of seizure was not accompanied by the phrase "not thereby limiting the generality of the foregoing" or by any other words of similar import customarily employed where general words are followed by particularization.

Respondents' contention that the only effect intended by the provision that the instrument of seizure "if recorded shall impart the same notice and have the same force and effect as a duly executed conveyance, transfer or assignment," was to give the same notice as by the recording of a voluntary assignment, is a construction which fails to give any effect whatsoever to the words "have the same force and effect" which follow the provision as to notice. If Congress had intended the effect of the assignment and its recordation to be limited to the rights of third parties and to the impartation of notice thereto, the words which follow are entirely superfluous and meaningless. Moreover, if respondents' contention

in respect of the effect of this particular statutory provision is correct, the instrument was nevertheless insufficient to effect a seizure of the accrued royalties for all of the reasons stated above including the express seizure of past damages and the omission expressly to seize or to mention accrued royalties.

2. THE EXECUTIVE ORDERS OF THE PRESIDENT, RELIED ON BY THE RESPONDENTS, SO FAR FROM SUPPORTING THE POSITION OF THE RESPONDENTS, SUPPORT THAT OF PETITIONERS.

Respondent duPont refers to a provision in the executive order of February 26, 1918 conferring general powers upon the Alien Property Custodian in respect of the seizure of property reading (R. 104):

> "A demand for the conveyance, transfer, assignment, delivery and payment of money or other property unless expressly qualified or limited shall be deemed to include every right, title, interest, and estate of the money in and (fol. 136) to the money or other property demanded as well as every power and authority of the enemy thereover."

The immediately preceding sentence of this order reads:

> "* * * Or the Alien Property Custodian may qualify or limit any such demand in such manner to such extent as he may in any case see fit and (without limiting the generality of the power to qualify and limit demands) he may in any case demand all or only such power and authority over the money or other property as he may see fit

> without demanding any conveyance, transfer, assignment, delivery or payment of such money or other property or any other right, title, interest, or estate therein or thereto except such as may be included within the power and authority demanded in the particular case over such money or other property."

Whether or not there has been such limitation is manifestly to be determined by an interpretation of the instrument of seizure in the light of proper rules of construction applicable thereto. If thus interpreted, the seizure was so limited (as we assert) the general provision relied on by respondents becomes inoperative by the express language of the executive order itself.

Even more significant, if not conclusive, is the executive order of February 26, 1926 (R. 125-127) constituting the authority and the only authority of the Alien Property Custodian to sell to the Chemical Foundation at a private sale the patents in question at the time of their seizure and sale. This executive order dated February 26, 1919 antedated the seizure of this petitioner's patent which was made on the 22nd of March, 1919 (R. 79-80). That is to say, the subsequent seizure was made for the express purpose of effecting the sale authorized by the executive order of February 26. The authority to sell therein contained was confined to:

> "* * * all of the letters patent, trade-marks, and rights under letters patent and trade-marks, including all profits and damages recoverable at law or in equity for the past infringement thereof which the Alien Property Custodian may seize or may have seized upon the provisions of the said

> Trading with the Enemy Act and the amendments thereto now or hereafter enacted and which he from time to time shall determine relate to the objects and purposes of said The Chemical Foundation (Inc.) as expressed and defined by its charter." (R. 126.)

It will be observed that the authority so granted did not extend to every right, title and interest with respect to the patent seized but only to the patents themselves and profits and damages for past infringement. The seizure was clearly made in furtherance of the object of this particular executive order and did not include accrued royalties which are not expressly mentioned either in the executive order or the seizure itself.

Both respondents also rely in part upon a subsequent executive order dated a year later, February 13, 1920, confirming the sale already made (88-90), and upon the deed of confirmation thereunder (R. 90-96) executed March 1, 1921, nearly two years later. Whatever power was exercised prior thereto in the seizure of the patents in 1919 must obviously be determined by the action then taken and not by some subsequent recital. Moreover, the executive order in its recital of intention merely recites that it was the intention of the executive order to sell all rights "including rights to receive moneys by way of royalties * * * which the Alien Property Custodian *may have seized*" (R. 89) and confirms the sale thereof. It in no way undertakes to define the extent of the seizure accomplished by any of the numerous instruments of seizure theretofore executed. It is true that it authorizes not only the sale of such rights as may have been seized but also of such rights as the Alien

Property Custodian "may seize". No further seizure took place and the only effect of this executive order was to confirm the sale of such property and rights as had already been seized. The deed of confirmation also relied on by respondents, after containing various recitals, reads:

> "* * * do hereby for valuable consideration heretofore received by me, sell, assign, transfer, and set over to said the Chemical Foundation (Inc.), all property, including (but not thereby limiting the generality of the foregoing) letters patent, rights under letters patent and rights thereunder, copyrights, rights under copyrights, certificates of registrations thereof, the publications upon which such registrations were granted, trade-marks, rights under trade-marks, together with the good will and business pertaining thereto *including all profits and damages recoverable at law or in equity for past infringement* with respect to any and all of the foregoing, choses in action, rights, interests, and benefits under agreements, and rights and claims of every character and description with respect to all of the foregoing, *seized* by me as Alien Property Custodian, or by my predecessor in such office specifically referred to in and assigned by said assignments, *and* I do hereby confirm and ratify the sale and assignment of and do hereby sell, assign, transfer and set over to said the Chemical Foundation (Inc.), all choses in action, rights, interests, and benefits under agreements and rights and claims of every character and description growing out of and appurtenant (fol. 124) to the ownership of said property, including (but not thereby limiting the generality of the foregoing) rights to receive moneys by way of

royalties or otherwise as compensation for the use of patents, copyrights, and trade-marks, and all right, title, and interest in and to the choses in action and the funds referred to in section 10, subsection (*f*) of the 'trading with the enemy act', as amended, *acquired by the Alien Property Custodian by virtue of the seizures by which there were seized patents,* copy-rights, or trade-marks, under which a license had theretofore been granted in accordance with the provisions of section 10, subsection (*c*) of said act, as amended, all of which property I, as Alien Property Custodian, from time to time have determined and do hereby determine to relate to the objects and purposes of said the Chemical Foundation (Inc.), as expressed and defined in its charter; the intent and purpose of this instrument being to vest in said the Chemical Foundation (Inc.), every right, title, interest, claim, and demand, save such as are specifically excepted in and by the said assignments, *acquired by Alien Property Custodian by virtue of the seizures* whereby the said property was seized." (R. 94-95 italics ours.)

It will be noted that the granting clauses of this Deed of Confirmation are separated into two parts by the word "and" (italicized for convenience in the foregoing excerpt—see preceding page) appearing about midway therein and in reality consist of two separate granting clauses joined together by such word. The first granting clause preceding the word "and" is confined to a confirmation of the sale of the property and rights *seized,* while the second granting clause following the word "and" covers in addition all rights "appurtenant" to ownership which were "acquired * * * by virtue of the seizures". Al-

though the seizure of the patents did not affect a seizure of royalties theretofore accrued, it would appear to be obvious that by the seizure of the patents the Alien Property Custodian acquired the right to the royalties thereafter accruing. It is therefore significant the first granting clause preceding the word "and" specifically includes past damages for infringement as among the rights *seized,* but makes no reference to the right to royalties under the presidential licenses which are referred to only in the second granting clause following the word "and" as a right "acquired * * * by virtue of the seizures" of the patents themselves and as such conveyed. Indeed, it is referred to as a right acquired by virtue of the seizures of patents under which such presidential licenses had been issued. That is to say, the right to the royalties accruing after seizure were, in the language of this instrument, "appurtenant" to ownership of the patent and hence "acquired by virtue of the seizures". The draftsman was thus careful to distinguish between the rights *in esse* which had been seized and other rights *in futuro* acquired through seizure.

If the right to the accrued royalties was among the rights seized and thus conveyed by the first of the granting clauses employed, specific reference thereto in the second clause was wholly superfluous. If, on the other hand, the purpose of the second clause, instead of being (as on its face appears) to convey rights thereafter flowing from the ownership of the property seized, was merely to convey additional rights seized, the language employed was certainly inapt for the purpose. The language employed is wholly inconsistent with the theory

now advanced and evinces a clear understanding on the part of the Alien Property Custodian at the time that by the seizure of the patent he only came into possession of the right to subsequently accruing royalties. The recital in the executive order which preceded this conveyance "the public interest will be best served by the elimination of any enemy interest adverse to American citizens arising by reason of said choses in action, or rights, interests * * * " (R. 90) is without significance, since the rights so referred to are thereinbefore identified as those which the Custodian "may seize or may have seized". As previously stated, there was no further seizure and the contention that the deed of confirmation, without further demand or seizure, amounted in law to an additional seizure of the royalties accrued prior to seizure is without legal support and is wholy inconsistent with the words and structure of its granting clauses quoted above. Singly and collectively this series of executive orders and instruments of conveyance confirm the contentions made in our opening brief that the right to recover royalties for the use of the patents up to the time of seizure were never seized and hence remained with the former German owners.

Respectfully submitted,

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1930.

No. 179. October Term, 1930.

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORM. ROESSLER, and BADISCHE-ANILIN & SODA-FABRIK,
Petitioners,

against

CHEMICAL FOUNDATION, INC.; E. I. DUPONT DENEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,
Respondents.

No. 180. October Term, 1930.

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING,
Petitioner,

against

E. I. DUPONT DENEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,
Respondents.

No. 181. October Term, 1930.

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORM. ROESSLER,
Petitioner,

against

E. I. DUPONT DENEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,
Respondents.

No. 182. October Term, 1930.

BADISCHE-ANILIN & SODA-FABRIK,
Petitioner,

against

E. I. DUPONT DENEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,
Respondents.

BRIEF ON BEHALF OF PLAINTIFF-RESPONDENT, THE CHEMICAL FOUNDATION, INC., IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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BRIEF ON BEHALF OF PLAINTIFF-RESPONDENT, THE CHEMICAL FOUNDATION, INC. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Statement.

While the Petition and brief of the Petitioners do not ostensibly attack the decree below in favor of the Chemical Foundation, their contentions, if sustained, would deprive it of one substantial, if relatively unimportant, part of the relief granted to it by those decrees. The Courts below held (Dist. Ct., R. 176-189, 29 F. (2nd) 597; Cir. Ct. of App., R. 251-263; Adv. Sh. 39 F. (2d) 366) that the Foundation was entitled to recover from the Dupont Company, the licensee, for all use and enjoyment of the licensed patents at all times, both before and after the patents were sold to it; that as the Foundation had, in its bill, limited the claim to compensation for use and enjoyment had after it had become the owner of the licensed patents, its recovery should be limited to that period; but that this limitation did not extend to the Foundation's rights in respect to the fund accumulated in the Treasury from the tentative royalty paid in by the licensee under the Act to secure payment of whatever decree might be rendered in the suit, the whole of which fund was held available to the Foundation as such security, whenever accrued. If the petitioners are right, the fund may be held to be security for claims in addition to those of the Foundation. Accordingly the Foundation is directly interested in sustaining the decree below.

Facts.

The statement of facts in the Petition requires some amplification. The license in question was issued to the Dupont Company by the Federal Trade Commission on January 21,

1918. As originally issued it required the licensee to pay to Alien Property Custodian a "royalty" of 5% of the net profits derived from the sale of products resulting from the licensed use (R. 29-34). This "royalty" did not, of course, purport to represent compensation to the owner of the patents for the value of the use, but was required by the express terms of Section 10 (d) of the Act to be paid and held as a trust fund for the joint benefit of the owner and the licensee, to secure whatever judgment might be rendered in a suit brought after the end of the war by the owner to recover compensation for such use. No payments were ever made by the licensee while the license stood in this original form, and it does not appear what, if any, use the licensee made of the patents during this period.

While the license remained as originally issued, the patents were seized by the Custodian. The instruments of seizure, effective February 3, 1919 and March 22, 1919 were in substantially identical form and seized not only the patents, but also

> "every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof" (R. 99, 102, 104).

The patents and appurtenant rights thus seized, including as we contend and the Courts below held, the present rights of action, were conveyed on April 10th, 1919 to the Foundation. The original conveyance clearly covered all that had been seized (R. 106-110). It assigned

> "1. Each of the letters patent of the United States and applications for letters patent of the United States enumerated in Schedule A hereto annexed, together with all claims and demands for profits and damages recoverable at law or in equity for the past infringement of said letters patent * * * *All as more specifically described and set forth in the requirements or demands relating to said letters patent* * * * issued by said A. Mitchell Palmer, as Alien Property Custodian, or by me as Alien

> Property Custodian, *without any reservation or qualification whatsoever* * * * and subject only to the provisions of a certain release to the United States of America, bearing even date herewith, and to the rights of citizens of the United States or of friendly nations as set forth in the requirements or demands * * *" (Italics ours).

The Petition asserts that "neither the instruments of seizure (R. 98-105) nor the assignment (R. 106-110) expressly covered the accrued royalties". This statement, so far as it relates to the conveyance to the Foundation is, we submit, incorrect, since long before the right to bring the present suits accrued, the Custodian, by his confirmatory assignment of March 1st, 1921 expressly confirmed the conveyance of the rights of action as included in the original assignment, and re-conveyed them *de novo* (R. 120-124). This instrument was executed in pursuance of an executive order of President Wilson dated February 13, 1920 which recited that the intention of the earlier executive orders, under which the Custodian had made the sale, had been to authorize the sale of these rights of action, and then specifically authorized him to make and confirm such sales (R. 115-117).

Nearly a year after the sale to the Foundation, on January 14th, 1920, the Federal Trade Commission amended the license so as to make the security-royalty, payable thereunder, 2% of the gross instead of 5% of the net receipts from and after August 1st, 1919 (R. 35). Thereafter the Dupont Co., as licensee, paid, under these terms, the sum of $61,884.98 which its answer (R. 51-52) represents to be 2% of the gross amount received by it from August 1st, 1919 to September 1st 1920, when the Federal Trade Commission cancelled the license. This fund is still held in the Treasury as security to meet the judgments in suits brought by the "owner of the patents". Under the terms of the Act any part of it not needed for the purpose is to be returned to the licensee.

The bills of complaint of the three German plaintiffs assert that notwithstanding the seizures and sales, they are

the "owners of the patents" to whom the Act grants the right of action for use and enjoyment of the patents, whenever such use and enjoyment were had. They concede, however, that their claim must be limited to compensation for use before the sale (Petition, 3-4) and they do not question the Foundation's right to recover for use and enjoyment after the sale. The Foundation's bill claims compensation only for use after the sale; but its position is, and the lower Courts have held, that the right to compensation for all use was effectively seized, and was sold to it with the patents, and that its failure to claim the compensation for use prior to the sale is an intentional waiver, destructive of that right, which accordingly has ceased to exist in favor of any one. The Foundation has not, however, waived any part of the right to avail itself of the security-royalties on deposit for the benefit of the suing "owner", and as it is the only such owner who can now exist, it claims an exclusive right to the security of the whole fund. The Foundation also contends that the concession that the Foundation has the rights for the period after sale is a concession of the validity of the whole seizure, for both periods.

With these additions to the statement in the Petition of the facts and of the positions of the parties we present the following answers to the reasons offered by Petitioners for the grant of the writ.

I.

The Circuit Court of Appeals in holding that the seizure of the right to sue for use and enjoyment prior to the sale was effectively seized, did not render a decision contrary to the decisions of this Court relative to the law governing the assignment of patents.

The Petitioners' main contention on this point is that since this Court has frequently held that in a voluntary as-

signment between private parties phrases like "all right, title and interest *in*" the assigned patent do not include the right to sue for past infringement, the words of the seizure and of the original assignment in the case at bar cannot carry the right to sue for past use and enjoyment. It is argued that Section 7(c) of the Trading with the Enemy Act, in providing that a seizure of a patent "shall have the same force and effect as a duly executed * * * assignment to the Alien Property Custodian," limits the effect of an instrument of seizure to that of a private conveyance, and thus brings the present seizures within the authority of the decisions in question.

Both branches of this argument appear fallacious. In the first place the assumption that the clause which gives the Custodian's seizure "the same effect as" an ordinary assignment, means that it shall have *only* such effect, and no other, is both gratuitous and unsound. The obvious purpose of Section 7 (c) as a whole was to cause seizures to vest title in the Custodian in the most complete manner possible, and the first paragraph of the section fully accomplished that result. That paragraph provides that patents, etc. shall, if required, be conveyed to the Custodian, "or the same may be seized" by him. This is a plenary grant of the power to seize. The second paragraph of the section was evidently intended merely to provide for proper recordation of instruments of seizure, and the fact that it contained a clause, inserted out of extra caution, to make sure that the seizure should cover all that a private assignor could convey, shows, not an intention to limit the effect of the complete seizures previously provided for, but a design to make them all-embracing. The Act has uniformly been held entitled to liberal construction, and such a limiting effect could only be given, if at all, by the strictest possible method of interpretation.

But if the Act did mean to limit the effect of the language of a seizure to that of a private assignment, the cases referred to would not be applicable. None of the assignments discussed in these cases use the language appearing in the in-

struments of seizure which comprehends the patents involved and

> "every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof."

This language is sufficiently broad to cover the rights in question for many reasons, a few of which will be noted.

(a) The words "and every right, title and interest with respect thereto" to be given any effect at all, must be held to include claims under Section 10 of the Act for past use and enjoyment of the patents, since every other conceivable interest in the subject was specifically covered either by the phrases which directly seized the patents themselves, or by those which seized the right to sue for past infringement. Effect should be given, if possible, to all parts and every clause of an instrument.

(b) These words are followed by the phrase "*including* all damages * * * for past infringement". The word "including" demonstrates that the preceding words were intended to have the broadest kind of meaning, inclusive of claims of every character.

(c) The language of Section 7 (c) as amended authorizing the seizure of patents and choses in action did not specifically designate by description the particular choses in action here involved. Yet the authority to seize the same is conceded, obviously because they were covered by the broad language used. The broad language used in the instrument of seizure should be given a like effect.

(d) The patent was not seized with rights, etc. "thereto" but with every right, title and interest "*with respect* thereto". Such phrases has been held to include references or relations exceedingly indirect. *People* v. *Clark,* 9 N. Y. 349; *Brett* v. *Rogers,* 1897, 1 Q. B. 525; *Tatam* v. *Reeve,* 1893, 1 Q. B. 44. See also *May* v. *Logan County,* 30 Fed. 250, and specially *May* v. *Saginaw County,* 32 Fed. 629, wherein the same in-

strument of conveyance referred to in *May* v. *Juneau County*, 30 Fed. 241, cited by the Petitioners was construed to the contrary. The Court in *May* v. *Saginaw County* also distinguishes the case of *Dibble* v. *Augur*, 7 Blatch. 86, likewise relied upon by the Petitioners.

As was said by the Circuit Court of Appeals in this case (R. p. 258):

> "Royalties are a very real 'interest' in, or in respect to, a patent and the right to recover royalties is a very real 'right.'"

But even if the language of our seizure had been identical with that in the cases relied on the latter would not apply. They are decisions interpreting the meaning of instruments executed by private persons in a business transaction. In such a case the court, as in the interpretation of all grants, seeks to give effect to the actual intention of the party who uses the language which it is interpreting and accordingly construes the granting language strictly, knowing that no grantor means to give up and no grantee expects to receive anything not plainly specified. Here, however, the court is interpreting, as the Circuit Court of Appeals clearly showed, an instrument of exactly the opposite character, expressing the intention of the seizor, which would naturally be as broad as possible. To the interpretation of such an instrument constructions applied to private grants afford no guide.

All this is unimportant in view of the fact that even if the right to sue for use and enjoyment was not specifically seized, it was still taken from the German plaintiffs and sold to the Foundation by the mere seizure and sale of the patents themselves. The statute grants the right to sue only to the "owner of the patent". This obviously, as the Courts below have held, means one who owns the patent at the time of suit, not one who used to own it. It cannot mean to grant, as the Petitioners would have it, separate rights of action, for different periods, to successive owners, since the Act requires that, in the suit, the whole future of the license be determined. As this is a matter in which

the owner of the patent at the time of suit is vitally interested, and one in which former owners have no interest whatever, the latter cannot have been intended as included within the grant. A seizure, identical in all essentials, was so construed in *Hicks* v. *Anchor Packing Co.*, 16 Fed. (2d) 723. This Court has itself treated the seizures and sales as valid and as including the rights in question. *U. S.* v. *Chemical Foundation*, 272 U. S. 1, 9-10, 15-16.

II.

The Courts below did not erroneously determine important questions of federal law.

As regards the correctness of the decision below to the effect that the German plaintiffs were not the "owners of the patents" within the meaning of the Act; that the 1928 Amendment could not be construed in such manner as to vest or revest in them any right of actions; and that if so construed, the amendment was invalid, we believe that the opinion of the Circuit Court of Appeals fully answers all the criticisms in the Petitioners brief.

As regards the importance of the questions at issue, the following considerations suggest themselves.

No matter of general or public interest is involved. The time to bring suits under Section 10 having expired many years ago, no one in the future can ever find himself in a position in which the law on this subject will control his rights. No one is now interested except the litigants in the suits now before the courts. The question of the constitutionally of the 1928 Amendment is of still less public interest. It affects only the handful of persons, who having, as enemies, owned patents which have been seized and sold by the Custodian, have nevertheless sued under Section 10 for use and enjoyment. It affects the claims of these only for use and enjoyment of the patents prior to sale; and whether or not

there is a single instance in which substantial use of any sold patent took place within that period is not made to appear. The whole dispute is, so far as concerns the future administration of the law of the land, a matter of ancient history. It involves only the private financial interests of a few individuals, who, we submit, have stated no reason which should lead this Court to conclude that the unanimous decisions of the Courts below ought to be reviewed.

Respectfully submitted,

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FARBWERKE vormals MEISTER LUCIUS & BRUNING, DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm. ROESSLER, and BADISCHE ANILIN & SODA FABRIK, Petitioners,

v.

CHEMICAL FOUNDATION, INC.; E. I. du PONT de NEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States, Respondents.

No. 180

FARBWERKE vormals MEISTER LUCIUS & BRUNING, Petitioner,

v.

E. I. du PONT de NEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States, Respondents.

No. 181

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm. ROESSLER, Petitioner,

v.

E. I. du PONT de NEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States, Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR RESPONDENT E. I. du PONT de NEMOURS & COMPANY IN OPPOSITION.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 179

FARBWERKE vormals MEISTER LUCIUS & BRUNING, DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm. ROESSLER, and BADISCHE-ANILIN & SODA-FABRIK, Petitioners,

v.

CHEMICAL FOUNDATION, INC.; E. I. du PONT de NEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States, Respondents.

No. 180

FARBWERKE vormals MEISTER LUCIUS & BRUNING, Petitioner,

v.

E. I. du PONT de NEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States, Respondents.

No. 181

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm. ROESSLER, Petitioner,

v.

E. I. du PONT de NEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States, Respondents.

No. 182

BADISCHE-ANILIN & SODA-FABRIK, Petitioner,

v.

E. I. du PONT de NEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States, Respondents.

No. 271

WALTER O. WOODS, as Treasurer of the United States, Petitioner,

v.

THE CHEMICAL FOUNDATION, INC., and E. I. du PONT de NEMOURS & CO., Respondents.

No. 272

HOWARD SUTHERLAND, as Alien Property Custodian, Petitioner,

v.

FARBWERKE vormals MEISTER LUCIUS & BRUNING, E. I. du PONT de NEMOURS & CO. and WALTER O. WOODS, as Treasurer of the United States, Respondents.

No. 273

HOWARD SUTHERLAND, as Alien Property Custodian, Petitioner,

v.

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm. ROESSLER, E. I. du PONT de NEMOURS & CO. and WALTER O. WOODS, as Treasurer of the United States, Respondents.

No. 274

HOWARD SUTHERLAND, as Alien Property Custodian, Petitioner,

v.

BADISCHE-ANILIN & SODA-FABRIK, E. I. du PONT de NEMOURS & CO. and WALTER O. WOODS, as Treasurer of the United States, Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR RESPONDENT E. I. du PONT de NEMOURS & COMPANY IN OPPOSITION.

Statement of the Case.

The decrees of the Circuit Court of Appeals for the Third Circuit, which the petitioners in cases Nos. 179,

180, 181 and 182 seek to have reviewed, affirmed decrees of the District Court for Delaware in four suits instituted in June, 1922, under § 10 (f) of the Trading with the Enemy Act (40 Stat. 411, 421), against E. I. du Pont de Nemours & Company, one of the respondents here, and Frank White as Treasurer of the United States, to recover compensation for the use of certain United States letters patent, formerly enemy-owned.

The du Pont Company had used the patents under a license from the Federal Trade Commission granted January 21, 1918, pursuant to § 10 (f) of the Trading with the Enemy Act and an Executive Order dated October 12, 1917. (Rec. 29, 35, 170.) The license was surrendered September 1, 1920. (Rec. 37, 170.)

The Treasurer of the United States, as holder of a trust fund paid in by the licensee pursuant to § 10 (d) of the statute, was made a codefendant.

The plaintiff in one of the suits was the Chemical Foundation, Inc., which acquired the patents by assignment from the Alien Property Custodian dated September 1, 1920. The Chemical Foundation, Inc. asserted all the rights inuring to the owner of the patents under § 10 of the Trading with the Enemy Act (Rec. 19), which included the right to recover compensation for all use of the patents by the Federal Trade Commission's licensee, the du Pont Company. For considerations which the record does not disclose, the Chemical Foundation, Inc. waived its claim against the du Pont Company for compensation for the use of the patents prior to its acquisition of them. (Rec. 177, 185, 192.)

The plaintiffs in the other three suits were the former

German owners of the patents, the petitioners here. They claimed the so-called accrued royalties, i. e., compensation for the use of the patents from the date of the license to April 10, 1919, when the patents and all rights with respect thereto were sold and assigned to the Chemical Foundation, Inc.

On April 28, 1928, the Alien Property Custodian, claiming that he, as the owner of the patents during the one-year period following the end of the War within which suits under § 10 (f) were required to be brought, was the only person authorized to bring suit for compensation for the use of the patents, and that notwithstanding that the period of limitations for bring such suits had expired he was entitled under § 19 of the Settlement of War Claims Act of 1928 (45 Stat. 254) to be substituted as plaintiff in place of the three German corporations, made a motion that that be done.

The cases were consolidated for trial. (Rec. 53.)

The District Court adjudged the Chemical Foundation, Inc., to be the owner of the patents from and after April 10, 1919, and as such entitled to recover from the du Pont Company reasonable compensation for all use thereof under the license granted by the Federal Trade Commission, together with interest (Rec. 191), and the du Pont Company did not appeal. (Rec. 228.)

Also, both lower courts decided against the claims of the former German owners, on the ground that the right to the accrued royalties was seized by the Alien Property Custodian along with the patents themselves and passed to the Chemical Foundation, Inc. by the assignment of April 10, 1919. (Rec. 195, 198, 201.)

They also, on that and other grounds, overruled the motion of the Alien Property Custodian to be substituted as plaintiff in place of the former German owners. (Rec. 194, 197, 200.)

The opinion of the District Court is reported in 29 F. (2d) 597; that of the Circuit Court of Appeals in 39 F. (2d) 366.

The Solicitor General, on behalf of the Treasurer of the United States and the Alien Property Custodian, does not now question the decisions of the lower courts. He merely asks that *if* writs of certiorari shall be granted the former German owners writs shall also be granted the Treasurer of the United States and the Alien Property Custodian so as to avoid any possibility of inconsistent decrees. (Pet. Nos. 271, 272, 273, 274.)

No conflict of decision nor any important question of Federal law is involved. As the Solicitor General states:

> "The causes of action arise under a war-time statute which has no general application in time of peace and upon a peculiar state of facts which will not likely arise in the future except as to certain related cases which fall within the same category as these four suits."

The question of the construction and constitutionality of § 19 of the Settlement of War Claims Act of 1928, upon which the petitioners the former German owners so strongly rely as a ground of review, does not enter into the case at all if, as both lower courts held, the right to the accrued royalties was seized by the Alien Property Custodian along with the patents, for petitioners themselves do not contend that under § 19

of the Settlement of War Claims Act of 1928 they could maintain a suit to recover accrued royalties the right to which the Alien Property Custodian had previously seized and assigned to third parties.

Summary of Argument.

I. By the demands of the Alien Property Custodian dated February 20, 1919, and March 26, 1919, the German corporations were divested of all property rights in and in respect of the patents in question, including the right of action given by § 10 (f) of the Trading with the Enemy Act against the du Pont Company, as the Federal Trade Commission's licensee, for compensation for all use of the patents.

II. The Alien Property Custodian transferred to the Chemical Foundation, Inc., all property rights acquired by him in and in respect of the patents in question, including the right of action against the du Pont Company, as the Federal Trade Commission's licensee, for compensation for all use of the patents.

III. The German corporations having been divested of ownership of the patents in question prior to the commencement of the present suits, those suits cannot be maintained under § 10 (f) of the Trading with the Enemy Act as it stood prior to the amendment of 1928, even though the right of action against the du Pont Company for the use of the patents prior to their seizure had remained vested in the German corporations.

IV. The German corporations having been divested also of the right to recover from the du Pont Company compensation for all use of the patents under the Federal Trade Commission's license, and the Alien Property Custodian having in turn assigned that right to the Chemical Foundation, Inc., § 19 of the Settlement of War Claims Act of 1928 amending § 10 (f) of the Trading with the Enemy Act should not be construed as authorizing either the German corporations or the Alien Property Custodian to sue for such compensation.

V. Even though the right to recover compensation from the du Pont Company for the use of the patents under the Federal Trade Commission's license prior to their seizure and assignment to the Chemical Foundation, Inc. had remained vested in the German corporations or the Alien Property Custodian, nevertheless, no suit having been brought within one year after the end of the War against the du Pont Company to recover such compensation by any person or corporation thereunto authorized, the du Pont Company's liability, if any, became extinguished, and a construction of § 19 of the Settlement of War Claims Act of 1928 that would authorize the German corporations or the Alien Property Custodian to maintain a suit for such compensation now, and thus reinstate the liability, would make it unconstitutional.

Argument.

Point I.

By the demands of the Alien Property Custodian dated February 20, 1919, and March 26, 1919, the German corporations were divested of all property rights in and in respect of the patents in question, including the right of action given by § 10 (f) of the Trading with the Enemy Act against the du Pont Company, as the Federal Trade Commission's licensee, for compensation for all use of the patents.

The whole argument for the German corporations rests upon the hypothesis that when the Alien Property Custodian seized their patents he did not seize the right to recover from the du Pont Company, as the Federal Trade Commission's licensee, compensation for the use of the patents prior to the seizure, but left that right still vested in them.

By demands dated February 20, 1919, and March 26, 1919, the Alien Property Custodian, acting under authority of the Trading with the Enemy Act, as amended by the Acts of March 28, 1918, and November 4, 1918, seized the patents in question, "and every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof." (Rec. 98, 99; 101, 102; 103, 104.)

The German corporations deny that this seizure included the right to recover from the du Pont Company, as the Federal Trade Commission's licensee, compen-

sation for the use of the patents prior to the seizure, i. e., the so-called accrued royalties.

The District Court and the Circuit Court of Appeals decided otherwise. The District Court said:

> "That the compehensive language of the instruments of seizure embraced accrued royalties, cannot, I think, in view of the purpose and scope of the amendment of November 4, 1918, be open to doubt." (Rec. 183.)

The Circuit Court of Appeals said:

> "* * * We find ourselves in full accord with the contention of the Custodian that his title to the patents and his right to recover royalties were complete and valid by virtue of a lawful seizure." (Rec. 261.)

The identical point had previously been decided the same way in *Hicks* v. *Anchor Packing Co.*, 16 Fed. (2d) 723, C. C. A. 3rd. There it was held that a seizure of a trade-mark in these same terms[1] was broad enough to divest the enemy owner not only of the trade-mark but of the right to so-called accrued royalties, i. e., the right to recover from the Federal Trade Commission's licensee compensation for the use of the trade-mark prior to the seizure. The opinion states:

> "The quoted provision of the statute [§ 7 (c) of the Trading with the Enemy Act as amended November 4, 1918] is broad enough to warrant

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[1] The instrument of seizure demanded the trade-mark "and every right, title and interest with respect thereto." 16 Fed. (2) 727.

> the demand thus made and the demand was broad enough to embrace the license and *accrued royalties.*" 16 F. (2d) 727. [Italics ours.]

No other conclusion is possible under the statute.

Ordinarily, of course, the owner of a patent may assign his patent and at the same time retain in himself the right to recover damages for past infringement or compensation for past use under a license, and it is because the latter right is separable to this extent that the courts have held in the cases cited in the brief for the German corporations (pp. 17-18), that it does not pass by assignment of the patent without more.

But this is not that kind of a case. As the Circuit Court of Appeals said:

> "We are not dealing with an assignment of patents where there is a question of what was in the minds of the contracting parties as to royalties and as to what passed and what was retained under the terms of an instrument they had drawn and signed. We are dealing with an act of seizure and have to determine wholly outside the law of assignment whether by the terms of the symbol of seizure the royalties in question were included. Having in mind the purpose of the law and observing that the Custodian manifestly attempted to seize the German patents and everything 'in respect' to them and to their ownership, we are of opinion that he accomplished what he attempted by words that embrace the royalties in question, * * *." (Rec. 258-259.)

The statement in the brief for the former German owners (pp. 14, 15), that the second paragraph of sub-

section (c) of § 7 of the Trading with the Enemy Act, as amended November 4, 1918, "expressly provides that the instrument of seizure * * * shall in the case of patents 'have the same force and effect as a duly executed assignment' ", is incorrect.

All that that provision says is that if an instrument of seizure shall be filed or recorded in any office for the filing or recording of conveyances, it "shall impart the same notice and have the same force and effect as a duly executed conveyance, transfer, or assignment to the Alien Property Custodian so filed, registered, or recorded." Obviously the sole purpose of this was to provide a way of charging third parties with notice of a seizure.

But aside from all this, the right to the so-called accrued royalties, i. e., the right to recover for the use of the formerly enemy-owned patent or trade-mark by the Federal Trade Commission's licensee prior to the seizure, as well as the right to recover for their use after the seizure, was created by § 10 (f) of the Trading with the Enemy Act,[1] *and that section made such*

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[1] No other right of action against the President's licensee existed, § 10 (c) of the Trading with the Enemy Act providing: "Such license shall be a complete defense to any suit at law or in equity instituted by the enemy or ally of enemy owners of the letters patent, trade-mark, print, label or copyright, or otherwise, against the licensee for infringement or for damages, royalty, or other money award on account of anything done by the licensee under such license, except as provided in subsection (f) hereof." (40 Stat. 421.)

right an inseparable incident of ownership of the patent or trade-mark by expressly providing that only the owner of the patent or trade-mark could enforce it.

Unless the effect of this provision *was* to make the right to sue for compensation for past use inseparable from ownership of the patent or trade-mark it would leave that right without any remedy whatever for its enforcement where it became separated from ownership of the patent or trade-mark—a result Congress could not possibly have intended.

It follows that when the Alien Property Custodian seized a patent or trade-mark under the Trading with the Enemy Act as amended November 4, 1918, he acquired, without more, along with the ownership of the patent or trade-mark, the right to recover from the Federal Trade Commission's licensee reasonable compensation for the use of the patent or trade-mark, as well before as after the seizure.

So, therefore, the instrument of seizure in the present case in specifying, besides the patents themselves, "every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity * * * for past infringement thereof," did more than was necessary in order to seize the right to recover from the du Pont Company, as the Federal Trade Commission's licensee, compensation for the use of the patents prior to the date of seizure.

Point II.

The Alien Property Custodian transferred to the Chemical Foundation, Inc., all property rights acquired by him in and in respect of the patents in question, including the right of action against the du Pont Company, as the Federal Trade Commission's licensee, for compensation for all use of the patents.

On April 10, 1919, the Alien Property Custodian, under the authority of Executive Orders promulgated February 26 and April 5, 1919, by Frank L. Polk, acting for the President (Rec. 161, 164), assigned to the Chemical Foundation, Inc., "the whole right, title, and interest acquired by * * * said Alien Property Custodian, as aforesaid, in and to" the patents here in question, "together with all claims and demands for profits and damages recoverable at law or in equity for the past infringement of said letters patent of the United States against every person, firm, corporation, or government except the Government of the United States of America." (Rec. 106, 108-109.)

Doubt having arisen as to the authority of the Alien Property Custodian to sell and convey to the Chemical Foundation, Inc., "certain of the said choses in action, * * * and rights and claims, including rights to receive moneys by way of royalties or otherwise, as compensation for the use of patents," the President, by executive order dated February 13, 1920, confirmed the authority of the Alien Property Custodian in that regard, and further authorized him "to confirm and ratify the said sales by the execution and delivery of a

suitable instrument of confirmation." (Rec. 115, 116-117.)

Thereafter, on March 1, 1921, the Alien Property Custodian executed a new assignment to the Chemical Foundation, Inc., confirming and ratifying the prior sales and specifically assigning "all choses in action, * * * rights and claims of every character and description growing out of and appurtenant to the ownership of said property, including (but not thereby limiting the generality of the foregoing) rights to receive moneys by way of royalties or otherwise as compensation for the use of patents, * * *;" and reciting that the intent and purpose was "to vest in said the Chemical Foundation, Inc., every right, title, interest, claim, and demand, save such as are specifically excepted in and by the said assignments, acquired by the Alien Property Custodian by virtue of the seizures * * *." (Rec. 118, 123-124.)

These are the conveyances that this Court upheld in *United States* v. *Chemical Foundation*, 272 U. S. 1, 71 L. ed. 131. It cannot be doubted that under their sweeping terms not only the patents but also the right of action against the du Pont Company for the so-called accrued royalties passed to the Chemical Foundation, Inc., and both lower courts so held. (Rec. 185, 262.)

Point III.

The German corporations having been divested of ownership of the patents in question prior to the commencement of the present suits, those suits cannot be maintained under § 10 (f) of the Trading with the Enemy Act as it stood prior to the amendment of 1928, even though the right of action against the du Pont Company for the use of the patents prior to their seizure had remained vested in the German corporations.

This follows from the plain letter of the statute. Section 10 (f) of the Trading with the Enemy Act as it stood prior to the amendment of 1928 provided that:

> "The *owner* of any patent, trade-mark, print, label, or copyright, under which a license is granted hereunder may, after the end of the War and until the expiration of one year thereafter,[1] file a bill in equity against the licensee in the district court of the United States * * *, for recovery from the said licensee for all use and enjoyment of the said patented invention, trade-mark, print, label, or copyrighted matter." [Italics ours.]

No one other than the owner of the patent, trade-mark, label or copyright was authorized to bring such a suit. Indeed, by another provision of the statute,

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[1] The War ended July 2, 1921. (S. J. Res. 16, 42 Stat. 105.)

§ 10 (c), suit by anyone else was expressly barred. (*Ante*, p. 11, foot-note 1.)

Consequently, even though the right of action against the du Pont Company for the use of the patents prior to their seizure by the Alien Property Custodian had remained vested in the German corporations, these suits would be barred because prior to their commencement the German corporations had ceased to be the owners of the patents by reason of the Alien Property Custodian's seizure.

This point, also, was decided in *Hicks* v. *Anchor Packing Co.*, ante, p. 9. There an Hungarian company, as the owner of a trade-mark at the time it was seized by the Alien Property Custodian, claimed to be still the owner within the meaning of § 10 (f) of the Trading with the Enemy Act, and as such entitled to recover from the Federal Trade Commission's licensee compensation for the use of the trade-mark. The District Court upheld the claim. 16 Fed. (2d) 724-725. The Circuit Court of Appeals, Third Circuit, reversed the District Court, citing the decision of this Court in *United States* v. *Chemical Foundation, Inc.*, 272 U. S. 1, 71 L. ed. 131, and saying:

> "From this it is clear that the Hungarian company, when the custodian seized its trade-mark, parted with its ownership and also with its claim to the proceeds of the license for its use. We hold that at the time this suit was brought the Hungarian Company was not the 'owner' within the meaning of § 10 (f) of the Act." 16 Fed. (2d) 727.

The brief for the German corporations asks for reconsideration of this decision on the ground that in a

later enactment, namely, § 19 of the Settlement of War Claims Act of 1928, Congress showed that by the word owner in § 10 (f) of the Trading with the Enemy Act it meant the former enemy owner.

The short answer is that the construction of § 10 (f) of the Trading with the Enemy Act may not be controlled by any subsequently declared intention of Congress. (*Carpenter* v. *Shaw*, — U. S. —, 74 L. ed. adv. 137, 139; *Levy* v. *Industrial Finance Corp.*, 276 U. S. 281, 283-284, 72 L. ed. 572, 573.)

But we dispute this view of § 19 of the Settlement of War Claims Act of 1928. Unquestionably the owner referred to in § 10 (f) of the Trading with the Enemy Act as originally enacted was the enemy owner. This was so because under the statute as it then stood the beneficial ownership of seized enemy property remained in the enemy, the Alien Property Custodian being "a mere conservator," without authority to sell except to prevent waste. (*United States* v. *Chemical Foundation, Inc.*, 272 U. S. 1, 10, 71 L. ed. 131, 141.) As has been pointed out, however,

> "* * * later the Congress by amendments changed the whole character of the Act and gave the Custodian power to seize and sell trademarks.[1] *United States* v. *Chemical Foundation,*

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[1] The Alien Property Custodian's power of sale extended to "all property, other than money, which has been or shall be, or which has been or shall be required to be, conveyed, transferred, assigned, delivered, or paid over to him," to which was added "any rights or powers which may be or become appurtenant thereto

supra. Legislation when enacted is not always restricted to the then present conditions; it is generally phrased to cover unknown conditions as later they may arise within the general scope of the legislative intent. A new owner appeared in the statute when the Congress created him by the amendments of March 28, 1918, and November 4, 1918, authorizing the Custodian to seize and sell enemy-owned trade-marks with their incidents, which without doubt include profits from a licensed use." *Hicks* v. *Anchor Packing Co.*, 16 Fed. (2d) 727.

There is nothing in the obscure language of § 19 of the Settlement of War Claims Act of 1928 to warrant setting aside this construction of § 10 (f) of the Trading with the Enemy Act as amended March 28 and November 4, 1918.

POINT IV.

The German corporations having been divested also of the right to recover from the du Pont Company compensation for all use of the patents under the Federal Trade Commission's license, and the Alien Property Custodian having in turn assigned that right to the Chemical Foundation, Inc., § 19 of the Settlement of War Claims Act of 1928 amending § 10 (f) of the Trading with the Enemy Act should not be construed as authorizing either the German corporations or the Alien Property Custodian to sue for such compensation.

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or to the ownership thereof in like manner as though he were the absolute owner thereof." (Act March 28, 1918, 40 Stat. 459, 460.)

As heretofore shown (Points I and II), long prior to the enactment of Section 19 of the Settlement of War Claims Act of 1928, the right to recover from the du Pont Company so-called accrued royalties for the use of the patents in question under the Federal Trade Commission's license was duly seized by the Alien Property Custodian along with the patents themselves and transferred to the Chemical Foundation, Inc.

Section 19 of the Settlement of War Claims Act, being an amendment of § 10 (f) of the Trading with the Enemy Act, must be construed, of course, in relation to § 12 of the same Act, as amended by the Act of March 28, 1918, which authorized the Alien Property Custodian to dispose of seized property, including patents and the right to royalties for the use thereof, by sale or otherwise, "in like manner as though he were the absolute owner thereof," and so construed it cannot be taken to mean that either the former enemy owner or the Alien Property Custodian may maintain a suit to recover accrued royalties the right to which the Alien Property Custodian, acting under this authority, had previously assigned to third parties.

The German corporations and the Alien Property Custodian do not dispute this construction of § 19 of the Settlement of War Claims Act of 1928, but the former contend that there has been no transfer of the right to the so-called accrued royalties to third parties—that they, the German corporations, are still the owners of the right. This contention has already been answered. (Points I and II, *ante*, pp. 8-14.)

Point V.

Even though the right to recover compensation from the du Pont Company for the use of the patents under the Federal Trade Commission's license prior to their seizure and assignment to the Chemical Foundation, Inc. had remained vested in the German corporations or the Alien Property Custodian, nevertheless, no suit having been brought within one year after the end of the War against the du Pont Company to recover such compensation by any person or corporation thereunto authorized, the du Pont Company's liability, if any, became extinguished, and a construction of § 19 of the Settlement of War Claims Act of 1928 that would authorize the German corporations or the Alien Property Custodian to maintain a suit for such compensation now, and thus reinstate the liability, would make it unconstitutional.

The right to bring suit to recover compensation for the use of an enemy-owned patent under a license granted pursuant to § 10 (c) of the Trading with the Enemy Act was given by § 10 (f) of that Act, and the same section limited the time for bringing the suit to one year after the end of the war.

Where, as here, the statute which creates a liability limits the time within which suit may be brought to enforce it, "the time within which the suit must be brought operates as a limitation of the liability itself as created, and not of the remedy alone," and consequently if suit be not brought within the prescribed

time the liability itself is extinguished. (*The Harrisburg*, 119 U. S. 188, 214, 30 L. ed. 358, 362.)

Section 10 (f) further provided that if suit were not brought within one year after the end of the War,

> "then the licensee shall not be liable to make any further deposits, and all funds deposited by him shall be repaid to him on order of the Alien Property Custodian."

In thus providing that in the event suit were not brought within the one-year period the licensee should get back the deposit he was required to make as security for payment for the use of the patent, Congress made doubly clear its intention that in such event the obligation itself should become extinguished.

So far as compensation for the use of the patents here in question during the period prior to their assignment by the Alien Property Custodian to the Chemical Foundation, Inc. is concerned, the only suits brought within the one-year period were those brought by the former German owners of the patents. As heretofore shown, however, the former German owners had no right to bring the suits. (Point III, *ante*, pp. 15-18.)

It follows that if § 19 of the Settlement of War Claims Act of 1928 be construed as giving the former German owners, or anybody else, the right to maintain a suit now against the licensee under these patents for the recovery of royalties that accrued prior to the assignment of the patents to the Chemical Foundation,

Inc.,[1] it would, by reinstating a liability which had become extinguished, deprive the licensee of its property without due process of law in contravention of the Fifth Amendment.

This was decided in *Danzer & Co.* v. *Gulf & Ship Island R. Co.*, 268 U. S. 633, 69 L. ed. 1126.

The question there was whether § 206 (f) of the Transportation Act, providing that "the period of Federal control shall not be computed as a part of the periods of limitation," was applicable in cases where the period of limitation had already expired, and if so, whether it was constitutional.

The Interstate Commerce Commission, overruling the carrier's contention "that plaintiff's right expired before the passage of the Transportation Act, and was not revived by § 206 (f)" (268 U. S. 634, 69 L. ed. 1128), awarded reparation. Suit was brought on the award and the carrier demurred "on the ground, among others, that § 206 (f), as construed and applied by the Commission, was unconstitutional; and that so to renew or revive the cause of action, which had expired before the passage of the Transportation Act, was to take defendant's property without due process of law, in contravention of the 5th Amendment." (268 U. S. 635, 69 L. ed. 1128.)

---

[1] Or, what comes to the same thing, the right to be substituted as plaintiff in a suit which had been brought within the prescribed period but was without legal force or effect because brought by one not authorized to sue. (*Compare Mellon* v. *Arkansas Land & Lumber Co.*, 275 U. S. 460, 463, 72 L. ed. 372, 374.)

The District Court sustained the demurrer and this Court affirmed the decision, saying:

> "Plaintiff's cause of action was created and limited by the Interstate Commerce Act. • • •
>
> "Plaintiff's right to file his claim with the Commission had expired several months before the passage of the Transportation Act. But, if the period of Federal control is to be excluded, the complaint was filed within time. During the period between such expiration and the passage of the Transportation Act, plaintiff had no right to file a claim with the Commission, and had no cause of action. *It is settled by the decisions of this Court that the lapse of time not only barred the remedy, but also destroyed the liability of defendant to plaintiff.*" 268 U. S. 635-636, 69 L. ed. 1128.) [Italics ours.]

The opinion concludes as follows:

> "Section 206 (f) will not be construed retroactively to create liability. *To give it that effect would be to deprive defendant of its property without due process, in contravention of the 5th Amendment.*" (268 U. S. 637, 69 L. ed. 1129.) [Italics ours.]

Conclusion.

The petitions should be denied.

Respectfully submitted,

G. CARROLL TODD,
Attorney for Respondent,
E. I du Pont de Nemours & Co.

J. P. LAFFEY,
W. S. GREGG,
Of Counsel.

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Nos. 179, 180, 181, 182

In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 179

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORM. ROESSLER, AND BADISCHE ANILIN SODA-FABRIK, PETITIONERS

v.

CHEMICAL FOUNDATION, INC., E. I. DU PONT DE NEMOURS & CO., AND WALTER O. WOODS, AS TREASURER OF THE UNITED STATES

MEMORANDUM FOR THE RESPONDENT, THE TREASURER OF THE UNITED STATES

(NOTE.—All of the captions will be found on pages 1 and 2 of the memorandum.)

In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 179

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, Deutsche Gold & Silber Scheide Anstalt vorm. Roessler, and Badische Anilin Soda-Fabrik, petitioners

v.

CHEMICAL FOUNDATION, INC., E. I. DU PONT DE NEMOURS & CO., and Walter O. Woods, as Treasurer of the United States

---

No. 180

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, petitioner

v.

E. I. DU PONT DE NEMOURS & CO., AND WALTER O. Woods, as Treasurer of the United States

No. 181

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORM. Roessler, petitioner

v.

E. I. DU PONT DE NEMOURS & CO., AND WALTER O. Woods, as Treasurer of the United States

---

No. 182

BADISCHE-ANILIN & SODA FABRIK, PETITIONER

v.

E. I. DU PONT DE NEMOURS & CO., AND WALTER O. Woods, as Treasurer of the United States

---

MEMORANDUM FOR THE RESPONDENT, THE TREASURER OF THE UNITED STATES

This litigation arises by reason of four suits which were instituted in equity in the District Court of the United States for the District of Delaware in June, 1922, by the Chemical Foundation, Inc., a Delaware corporation, and the Farbwerke vormals Meister Lucius & Bruning, the Deutsche Gold & Silber Scheide Anstalt vorm. Roessler and the Badische Anilin & Soda Fabrik, German corporations, respectively, against E. I. du Pont de Nemours & Company, a Delaware corporation (to which suits the Treasurer of the United States was made a party defendant pursuant to statutory

requirement) (R. 15, 38, 41, 44), to recover a reasonable royalty as prescribed by subdivision (f) of Section 10 of the Trading with the Enemy Act (c. 106, 40 Stat. 421), for the use and enjoyment by said du Pont Company of United States letters patent Nos. 680,395, 718,340, and 868,294 under a license issued to the du Pont Company on January 21, 1918, by the Federal Trade Commission (R. 29). These four causes were consolidated by the District Court (R. 53) and were heard together by the Circuit Court of Appeals (R. 249).

The District Court decided in favor of the Chemical Foundation and against the petitioners, 29 F. (2d) 597 (R. 176), and the Circuit Court of Appeals affirmed the decision of the District Court in all respects, 39 F. (2d) 366 (R. 251).

The facts involved in these four cases are clearly stated, and the law applicable thereto discussed, in the opinions below, and it is unnecessary to restate the same in this memorandum.

The Treasurer of the United States does not now contend that he should prevail in all of these four suits. These causes have been thoroughly considered by two courts, both of which have reached the same conclusions. The causes of action arise under a war-time statute which has no general application in time of peace and upon a peculiar state of facts which will not likely arise in the future except as to certain related cases which fall within the same category as these four suits. The Treasurer and

the Alien Property Custodian, however, filed their petition for writs of certiorari to review the decrees of the Circuit Court of Appeals (Docket Nos. 271, 272, 273, 274), merely because the German plaintiffs, Farbwerke vormals Meister Lucius & Bruning, Deutsche Gold & Silber Scheide Anstlat vorm. Roessler, and Badische Anilin & Soda Fabrik, who failed in the courts below, filed a petition for writs of certiorari. Furthermore, these causes are not so clear and simple that the Treasurer and the Alien Property Custodian will be justified in assuming that there is no possibility that this Court will refuse to review the matter upon the petition of the German plaintiffs and that the ultimate decision of the causes may not be in favor of them and against the Treasurer and the Custodian. If this should occur, and if the decrees against the German plaintiffs should be reversed while the decree in favor of the Chemical Foundation should stand, such decrees would be inconsistent, and the Treasurer would be placed in an awkward position in that he would in that event be ordered to pay royalty to the German plaintiffs which both courts below determined had been assigned to the Chemical Foundation.

This whole litigation in effect is now narrowed to a controversy between the German plaintiffs and the Chemical Foundation. It is a matter of indifference to the respondent, the Treasurer of the United States, whether the instant petition is

granted or not. However, reference is made to the petition for writs of certiorari of this respondent in Nos. 271, 272, 273, 274, and respondent feels that if the instant petition is granted, then the Court should review all of the decrees below. Consequently, he neither joins in nor opposes the prayer of the instant petition.

THOMAS D. THACHER,
Solicitor General.

J. FRANK STALEY,
Attorney.

THOMAS E. RHODES,
Special Assistant to the Attorney General.

JULY, 1930.

U. S. GOVERNMENT PRINTING OFFICE: 1930

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Nos. 179, 180, 181, 182, 271, 272, 273, 274

In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 179

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORM. ROESSLER, AND BADISCHE ANILIN SODA-FABRIK, PETITIONERS

v.

CHEMICAL FOUNDATION, INC., E. I. DU PONT DE NEMOURS & CO., AND WALTER O. WOODS, AS TREASURER OF THE UNITED STATES

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

(NOTE.—All of the captions will be found on pages 1, 2, and 3 of this memorandum)

In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 179

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, Deutsche Gold & Silber Scheide Anstalt vorm. Roessler, and Badische Anilin Soda-Fabrik, petitioners

v.

CHEMICAL FOUNDATION, INC., I. E. DU PONT DE NEMOURS & CO., and Walter O. Woods, as Treasurer of the United States

---

No. 180

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, petitioner

v.

E. I. DU PONT DE NEMOURS & CO., AND WALTER O. Woods, as Treasurer of the United States

---

No. 181

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORM. Roessler, petitioner

v.

E. I. DU PONT DE NEMOURS & CO., AND WALTER O. Woods, as Treasurer of the United States

No. 182

BADISCHE-ANILIN & SODA FABRIK, petitioner

v.

E. I. DU PONT DE NEMOURS & Co., AND WALTER O. Woods, as Treasurer of the United States.

No. 271

WALTER O. WOODS, AS TREASURER OF THE UNITED States, petitioner

v.

THE CHEMICAL FOUNDATION, INC., AND E. I. DU Pont de Nemours & Co., respondents

---

No. 272

HOWARD SUTHERLAND, AS ALIEN PROPERTY CUSTODIAN, petitioner

v.

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, E. I. du Pont de Nemours & Co., and Walter O. Woods, as Treasurer of the United States, respondents.

No. 273

HOWARD SUTHERLAND, AS ALIEN PROPERTY CUSTODIAN, petitioner

v.

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORM. Roessler, E. I. du Pont de Nemours & Co., and Walter O. Woods, as Treasurer of the United States, respondents

No. 274

HOWARD SUTHERLAND, AS ALIEN PROPERTY CUSTODIAN, petitioner

v.

BADISCHE ANILIN & SODA-FABRIK, E. I. DU PONT DE NEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States, respondents

---

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

MEMORANDUM FOR THE TREASURER OF THE UNITED STATES AND THE ALIEN PROPERTY CUSTODIAN

This litigation arises by reason of four suits which were instituted in equity in the District Court of the United States for the District of Delaware in June, 1922, by the Chemical Foundation, Inc., a Delaware corporation, and the Farbwerke vormals Meister Lucius & Bruning, the Deutsche Gold & Silber Scheide Anstalt vorm. Roessler, and the Badische Anilin & Soda-Fabrik, German corporations, respectively, against E. I. du Pont de Nemours & Company, a Delaware corporation (to which suits the Treasurer of the United States was made a party defendant pursuant to statutory requirement) (R. 11, 34, 36, 39), to recover a reasonable royalty as prescribed by subdivision (f) of Section 10 of the Trading with the Enemy Act (c. 106, 40 Stat. 421), for the use and enjoyment by

said du Pont Company of United States Letters Patent Nos. 680,395, 718,340, and 868,294 under a license issued to the du Pont Company on January 21, 1918, by the Federal Trade Commission (R. 27). These four cases were consolidated by the District Court (R. 44), and were heard together by the Circuit Court of Appeals (R. 181). On April 28 1928, the Alien Property Custodian filed motions for substitution as plaintiff for and instead of the three German plaintiffs in the suits brought by them (R. 53, 60, and 67), basing his claim for substitution on the provisions of Section 19 of the Settlement of War Claims Act, approved March 10, 1928 (c. 167, 45 Stat. 254, 277).

The District Court decided in favor of the Chemical Foundation and against the German petitioners and the Alien Property Custodian and the Treasurer, 29 F. (2d) 597 (R. 137), and the Circuit Court of Appeals affirmed the decision of the District Court in all respects, 39 F. (2d) 366 (R. 183).

The petition for certiorari in Nos. 179, 180, 181, and 182 was filed on June 4, 1930. On June 4, 1930, the Chief Justice extended for 35 days from that date the time within which the Treasurer of the United States and the Alien Property Custodian might apply for writs of certiorari in Nos. 271, 272, 273, and 274. (R. 201.) The petition of the Treasurer of the United States and the Alien Property Custodian for writs of certiorari in Nos. 271, 272, 273, and 274 was filed on July 8, 1930.

Certiorari in each of said cases was granted on October 13, 1930, 282 U. S. iv–v. (R. 201–204.)

The facts involved in these four cases are clearly stated and the law applicable thereto is discussed in the opinions below (R. 137, 183), and it is unnecessary to restate the same in this memorandum.

The Treasurer of the United States and the Alien Property Custodian do not now contend, as they contended in the courts below, that they should prevail in these suits. The Treasurer and the Custodian, however, felt compelled to file a petition for writs of certiorari to review the decrees below because the German petitioners, Farbwerke vormals Meister Lucius & Bruning, the Deutsche Gold & Silber Scheide Anstalt vorm. Roessler, and the Badische Anilin & Soda-Fabrik, who failed in the courts below, had filed a petition for writs of certiorari. If the Treasurer and the Custodian had not obtained writs of certiorari to review the decrees below, and if those decrees should be reversed upon the petitions presented by the German petitioners, the Treasurer and the Custodian might be required to satisfy conflicting decrees.

This whole litigation in effect is now narrowed to a controversy between the German petitioners and the Chemical Foundation and the du Pont Company. The Treasurer of the United States and the Alien Property Custodian neither join nor oppose the German petitioners in seeking the relief asked

for by them, but stand ready to comply with such decrees as may be entered upon the mandate of this Court.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.

J. FRANK STALEY,
Acting Head, Admiralty Division.

THOMAS E. RHODES,
Special Assistant to the Attorney General.

MARCH, 1931.

U. S. GOVERNMENT PRINTING OFFICE: 1931

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 179

FARBWERKE vormals MEISTER LUCIUS & BRUNING, DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm. ROESSLER, and BADISCHE-ANILIN & SODA-FABRIK, Petitioners,

v.

CHEMICAL FOUNDATION, INC., E. I. du PONT de NEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States, Respondents.

No. 180

FARBWERKE vormals MEISTER LUCIUS & BRUNING, Petitioner,

v.

E. I. du PONT de NEMOURS & CO. and WALTER O. WOODS, as Treasurer of the United States, Respondents.

No. 181

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm. ROESSLER, Petitioner,

v.

E. I. du PONT de NEMOURS & CO. and WALTER O. WOODS, as Treasurer of the United States, Respondents.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR RESPONDENT E. I. du PONT de NEMOURS & COMPANY.

G. CARROLL TODD,
Attorney for Respondent.

W. S. GREGG,
Of Counsel.

[NOTE: For additional captions see inside cover.]

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 179

FARBWERKE vormals MEISTER LUCIUS & BRUNING, DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm, ROESSLER, and BADISCHE-ANILIN & SODA-FABRIK, Petitioners,

v.

CHEMICAL FOUNDATION, INC., E. I. du PONT de NEMOURS & CO., and WALTER O. WOQDS, as Treasurer of the United States, Respondents.

No. 180

FARBWERKE vormals MEISTER LUCIUS & BRUNING, Petitioner,

v.

E. I. du PONT de NEMOURS & CO, and WALTER O. WOODS, as Treasurer of the United States, Respondents.

No. 181

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm. ROESSLER, Petitioner,

v.

E. I. du PONT de NEMOURS & CO. and WALTER O. WOODS, as Treasurer of the United States, Respondents.

No. 182

BADISCHE-ANILIN & SODA-FABRIK, Petitioner,

v.

E. I. du PONT de NEMOURS & CO. and WALTER O. WOODS, as Treasurer of the United States, Respondents.

No. 271.

WALTER O. WOODS, as Treasurer of the United States, Petitioner,

v.

THE CHEMICAL FOUNDATION, INC., and E. I. du PONT de NEMOURS & CO., Respondents.

No. 272

HOWARD SUTHERLAND, as Alien Property Custodian, Petitioner,

v.

FARBWERKE vormals MEISTER LUCIUS & BRUNING, E. I. du PONT de NEMOURS & CO. and WALTER O. WOODS, as Treasurer of the United States, Respondents.

No. 273

HOWARD SUTHERLAND, as Alien Property Custodian, Petitioner,

v.

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm. ROESSLER, E. I. du PONT de NEMOURS & CO. and WALTER O. WOODS, as Treasurer of the United States, Respondents.

No. 274

HOWARD SUTHERLAND, as Alien Property Custodian, Petitioner,

v.

BADISCHE ANILIN & SODA-FABRIK, E. I. du PONT de NEMOURS & CO. and WALTER O. WOODS, as Treasurer of the United States, Respondents.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR RESPONDENT E. I. du PONT de NEMOURS & COMPANY.

Statement of the Case.

On June 23, 1922, the Chemical Foundation, Inc., then the owner of United States letters patent Nos.

680,395, 718,340 and 868,294, formerly enemy-owned, sued E. I. du Pont de Nemours & Company in the District Court for Delaware under § 10 (f) of the Trading with the Enemy Act, 40 Stat. 411, 421, to recover compensation for the use of the patents under a license from the Federal Trade Commission, granted January 21, 1918, pursuant to § 10 (c) of the same Act and an Executive Order dated October 12, 1917, and surrendered September 1, 1920. Rec. 11, 27, 34, 131, 132.

The license provided for a royalty of 5 per cent of the net profits, Rec. 28, subsequently changed to 2 per cent of the gross sales, Rec. 32, which was deposited with the Treasurer of the United States under § 10 (d) of the Trading with the Enemy Act, 40 Stat. 421, "as a trust fund for the said licensee and for the owner of the said patent, * * *."[1] The Treasurer as holder of this fund was made a codefendant.

The Chemical Foundation acquired the patents, "together with every right, title, and interest with respect thereto," April 10, 1919, by assignment from the Alien Property Custodian, Rec. 81, who had previously seized the same by demands served February 20, 1919, and March 26, 1919, under authority of the Trading with the Enemy Act as amended by the Act of November 4, 1918, 40 Stat. 1020, 1021. Rec. 75-76; 77-78; 79-80.[2]

---

[1] The du Pont Company paid in $61,884.98 under this provision. Rec. 47.

[2] These are the conveyances that this Court considered and upheld in *United States* v. *Chemical Foundation*, 272 U. S. 1, 71 L. ed. 131.

The Chemical Foundation asserted its ownership of the patents, "and of every right, title, and interest therein, including the rights inuring to the owner * * * under Section 10 of the Trading with the Enemy Act," one such being the right to recover compensation "for all use and enjoyment" of the patents by the Federal Trade Commission's licensee, the du Pont Company. Complaint, pars. VIII, X, Rec. 13, 14; Op. C. C. A., Rec. 185.[1] In the prayer for relief, however, the Chemical Foundation, for considerations which the record does not disclose, waived its claim for compensation for the use of the patents prior to its acquisition of them. Complaint, Rec. 14; Op. Dist. Ct., Rec. 137, 144, 150; Op. C. C. A., Rec. 185, 187; Decree, Rec. 150.[2]

On June 30, 1922, the former enemy owners of the patents, three German corporations, brought suit against the du Pont Company in the same court and under the same provision of the statute, claiming com-

---

[1] The petition for certiorari, p. 5, erroneously states that the Chemical Foundation asserted no right to the royalties which had accrued prior to the seizure and sale of the patents.

[2] Until August 1, 1919, the royalty payable under the Federal Trade Commission's license was, as previously stated, 5 per cent of the *net profits*. Rec. 28, 32. The du Pont Company's answer states that no royalties were payable under the Federal Trade Commission's license prior to April 10, 1919, when the Chemical Foundation acquired the patents. Rec. 43. Presumably, therefore, no net profits were derived from the use of the patents prior to that time.

pensation for "all use and enjoyment of the said patents" by the du Pont Company under the Federal Trade Commission's license. Rec. 34, 36, 39. Subsequently they limited their claims to royalties that had accrued at the time of the assignment to the Chemical Foundation—the so-called accrued royalties. Rec. 137, 186. In these suits also the Treasurer of the United States was made a codefendant.

On October 6, 1927, the suit of the Chemical Foundation and the three suits of the former German owners were consolidated for trial. Rec. 44.

On April 28, 1928, the Alien Property Custodian, claiming that he was the owner of the patents during the one-year period following the end of the War, within which suits under § 10 (f) were required to be brought, and as such was the only person authorized to bring suit for compensation for the use of the patents, and that notwithstanding that the period of limitations for bringing such suits had expired he was entitled under § 19 of the Settlement of War Claims Act of 1928, 45 Stat. 254, to be substituted as plaintiff in place of the three German corporations, made a motion that that be done. Rec. 53.

The Alien Property Custodian contended that he had seized the right to the so-called accrued royalties along with the patents but did not assign it to the Chemical Foundation. Op. Dist. Ct., Rec. 146, 29 F. (2d) 597, 603; Op. C. C. A., Rec. 186, 192, 39 F. (2d) 366, 369, 371.

The District Court adjudged the Chemical Foundation to be the owner of the patents from and after

April 10, 1919, and as such entitled to recover from the du Pont Company reasonable compensation for all use and enjoyment thereof under the license granted by the Federal Trade Commission, "without regard to whether or not such use and enjoyment was wholly or in part before or after said April 10, 1919," the amount to be ascertained by an accounting. Rec. 149-150. Since, however, the Chemical Foundation had waived its claim for compensation for the use of the patents prior to April 10, 1919 (the date of its acquisition of them), the decree directed that the accounting be limited to the use of the patents by the du Pont Company subsequent to that date. Rec. 150. The du Pont Company did not dispute its liability to this extent.

Both the District Court and the Circuit Court of Appeals decided against the claims of the former German owners, *on the ground that the right to the accrued royalties was seized by the Alien Property Custodian with the patents themselves and passed to the Chemical Foundation by the assignment of April 10, 1919.* Rec. 152, 154, 156; 195, 197, 198, 199. On that and other grounds they also overruled the motion of the Alien Property Custodian to be substituted as plaintiff in place of the former German owners. Rec. 151, 153, 155; 197, 199, 200.

The opinion of the District Court is reported in 29 F. (2d) 597; that of the Circuit Court of Appeals in 39 F. (2d) 366.

The three German corporations, former owners of the patents, joined in one petition for a writ of cer-

tiorari, No. 179, and also filed separate petitions, Nos. 180, 181 and 182, all of which were granted.

The petitioner in No. 271, the Treasurer of the United States, and the petitioner in Nos. 272, 273 and 274, the Alien Property Custodian, do not now dispute the correctness of the decisions below. They applied for writs of certiorari only to assure that all the decrees would be before this Court in the event that it granted the application of the former German owners. (Pet. 4-5.)

Section 10 (f) of the Trading with the Enemy Act, under which the suits were brought; the amendment thereof contained in § 19 of the Settlement of War Claims Act of 1928; § 10 (c) of the Trading with the Enemy Act, under which the Federal Trade Commission granted the du Pont Company the license to use the patents in question; § 10 (d) of the same Act providing that the royalties paid by licensees under § 10 (c) shall be held in the Treasury of the United States as a trust fund; § 7 (c) of the same Act, as amended by the Act of November 4, 1918, under which the patents were seized by the Alien Property Custodian; and the fourth paragraph of § 12 of the same Act, as amended by the Act of March 28, 1918, under authority of which the Alien Property Custodian sold the patents to the Chemical Foundation, are set forth in the Appendix.

The Issues.

The petition for certiorari of the former German owners stated, p. 5, as a reason why the writ should be granted, that the District Court and the Circuit

Court of Appeals decided that § 19 of the Settlement of War Claims Act of 1928, amending § 10 (f) of the Trading with the Enemy Act, was unconstitutional.

We do not so understand the decisions below. All that either the District Court or the Circuit Court of Appeals said on that question was that the statute *would be* unconstitutional *if* construed as revesting in the former German owners the right to recover the so-called accrued royalties after that right had been seized by the Alien Property Custodian and transferred to the Chemical Foundation for value. Op. Dist. Ct., Rec. 144-145; Op. C. C. A., Rec. 190-191.

And even in that form the question has been removed from the case, as the former German owners are not now contending that they could maintain a suit under that provision to recover accrued royalties the right to which the Alien Property Custodian had duly seized and assigned to third parties before the provision was enacted.

If, therefore, the courts below were correct in holding that the right to recover the so-called accrued royalties was seized by the Alien Property Custodian when he seized the patents, that is the end of the case.

If they were wrong as to that another question arises—whether the German corporations are not barred from maintaining these suits because not the owners of the patents at any time during the period limited by § 10 (f) of the Trading with the Enemy Act for bringing suit to recover compensation for the use of patents under licenses granted by the Federal Trade Commission pursuant to § 10 (c) of the same Act.

Summary of Argument.

The whole argument for the German corporations as now made rests upon the hypothesis that when the Alien Property Custodian seized their patents he did not seize the right to recover from the du Pont Company, as the Federal Trade Commission's licensee, compensation for the use of the patents prior to the seizure, but left that right still vested in them.

By demands dated February 20, 1919, and March 26, 1919, the Alien Property Custodian, acting under authority of the Trading with the Enemy Act, as amended by the Acts of March 28, 1918, and November 4, 1918, seized the patents in question, "and every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof." Rec. 75, 76; 77, 78; 79, 80.

On April 10, 1919, the Alien Property Custodian sold and assigned to the Chemical Foundation everything seized by these demands. Rec. 81.

The respondents maintain that by these demands the Alien Property Custodian seized, along with the patents, the right to recover from the du Pont Company compensation for all use of the patents under the Federal Trade Commission's license, not only for their use after the seizure, but before as well, i. e., the so-called accrued royalties. This was also the position of the Alien Property Custodian. Op. Dist. Ct., Rec. 146, 29 F. (2d) 597, 603; Op. C. C. A., Rec. 186, 192, 39 F. (2d) 366, 369, 371.

The District Court and Circuit Court of Appeals so held. The District Court said:

> "That the comprehensive language of the instruments of seizure embraced accrued royalties cannot, I think, in view of the purpose and scope of the amendment of November 4, 1918, be open to doubt." Rec. 142; 29 F. (2d) 597, 601.

The Circuit Court of Appeals said:

> "Having in mind the purpose of the law and observing that the Custodian manifestly attempted to seize the German patents and everything 'in respect' to them and to their ownership, we are of opinion that he accomplished what he attempted by words that embraced the royalties in question, and that, in consequence, the German plaintiffs were owners of neither the patents nor the royalties at the time they instituted their suits * * *." Rec. 190; 39 F. (2d) 366, 371.

The identical point had previously been decided the same way in *Hicks* v. *Anchor Packing Co.*, 16 F. (2d) 723, C. C. A. 3rd. There it was held that a seizure of a trade-mark in these same terms [1] was broad enough to divest the enemy owner not only of the trade-mark but of the right to so-called accrued royalties, i. e., the right to recover from the Federal Trade Commission's licensee compensation for the use of the trade-mark prior to the seizure. The opinion states:

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[1] The instrument of seizure demanded the trade-mark "and every right, title and interest with respect thereto." 16 F. (2d) 727.

> "The quoted provision of the statute [§ 7 (c) of the Trading with the Enemy Act as amended November 4, 1918] is broad enough to warrant the demand thus made and the demand was broad enough to embrace the license and *accrued royalties.*" 16 F. (2d) 727. [Italics ours.]

The respondent the du Pont Company contends further that even if the right to compensation for the use of the patents prior to their seizure remained vested in the German corporations the latter cannot maintain these suits because not the owners of the patents at any time during the one year after the end of the War within which suits to recover compensation for the use of patents under licenses granted by the Federal Trade Commission pursuant to § 10 (c) of the Trading with the Enemy Act were required to be brought.

Argument.

Point I.

By the demands of the Alien Property Custodian dated February 20, 1919, and March 26, 1919, the German corporations were divested of all property rights in and in respect of the patents in question, including the right of action given by § 10 (f) of the Trading with the Enemy Act against the du Pont Company, as the Federal Trade Commission's licensee, for compensation for all use of the patents, before as well as after the seizure.

1. Section 7 (c) of the Trading with the Enemy Act, as amended by the Act of November 4, 1918, 40 Stat.

1020, specifically authorized the seizure of enemy-owned property of all kinds, including "patents, copyrights, * * * trade-marks, choses in action, and rights and claims of every character and description * * *."

The purpose of the Act has been stated by this Court as follows:

> "At the time of the passage of the act, a large amount of property was owned and much business was carried on by alien enemies and their allies in this country. Congress determined that their property should be taken over and that trade with them should cease. The purpose was to weaken enemy countries by depriving their supporters of power to give aid." *Miller* v. *Robertson*, 266 U. S. 243, 248, 69 L. ed. 265, 271.

It has also been held that,

> "There is nothing to support a strict construction of the Act in respect of the seizure and disposition of enemy property;"

and that it

> "should be liberally construed to give effect to the purposes it was enacted to subserve." *United States* v. *Chemical Foundation*, 272 U. S. 1, 10, 71 L. ed. 131, 141.

For the same reason the instruments of seizure should be liberally construed. And so Executive Order No. 1813 provides:

> "A demand for the conveyance, transfer, assignment, delivery and payment of money or

> other property *unless expressly qualified or limited* shall be deemed to include every right, title, interest, and estate of the enemy in and to the money or other property demanded as well as every power and authority of the enemy thereover." Rec. 102, 104. [Italics ours.]

The language of the instruments of seizure in the present case, "letters patent and every right, title and interest with respect thereto," was broad enough to include the right to compensation that had accrued under licenses to use the patents, and, in the light of the purpose of Congress in authorizing the seizure as above set forth, must be so construed. What the Court said of the statute itself is equally applicable to seizures under it—

> "There is no support for a construction that would restrain the force of the broad language used." *United States* v. *Chemical Foundation*, 271 U. S. 1, 11, 71 L. ed. 131, 141.

Besides, the language of the instruments of seizure expressly included "all damages and profits * * * for past infringement * * *."

While the du Pont Company used the patents under a license from the Federal Trade Commission, nevertheless, it used them without the permission of the owners, and therefore, as the District Court and the Circuit Court of Appeals both held, what it owed for such use partook more of the nature of "damages and profits for past infringement" than of "royalties" under a true license. Rec. 142, 188.

2. The right to recover from the Federal Trade Commission's licensee compensation for the use of a formerly enemy-owned patent, before as well as after the seizure, was made an inseparable incident of ownership of the patent by the Trading with the Enemy Act itself.

The right was created by § 10 (f) of the Act, and authority to enforce it by suit was vested exclusively in the *owner of the patent*. *Post*, 29. Indeed, by another section of the Act, § 10 (c), *post*, 31, suit by any one else was expressly barred.

Unless the effect of these provisions was to make the right to sue for compensation for past as well as future use inseparable from ownership of the patent, that right would be left without any remedy whatever for its enforcement where it had become separated from ownership of the patent—a result which could not have been intended.

It follows that when the Alien Property Custodian seized a patent under the Trading with the Enemy Act as amended November 4, 1918, he acquired, without more, along with the ownership of the patent, the right to recover from the Federal Trade Commission's licensee reasonable compensation for the use of the patent, as well before as after the seizure.

So, therefore, the instrument of seizure in the present case in specifying, besides the patents themselves, "every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity • • • for past infringement thereof," did more than was necessary in order to seize the right

to recover from the du Pont Company, as the Federal Trade Commission's licensee, compensation for the use of the patents prior to the date of seizure.

3. The demands of February 20, 1919, and March 26, 1919, by which the seizure was effected, were expressly confirmed by the Alien Property Custodian as including the right to recover compensation for the use of the patents under the Federal Trade Commission's license prior to the date of seizure.

On April 10, 1919, the Alien Property Custodian, under the authority of Executive Orders promulgated February 26 and April 5, 1919, by Frank L. Polk, acting for the President, Rec. 125, 127, assigned to the Chemical Foundation "the whole right, title, and interest acquired by * * * said Alien Property Custodian, as aforesaid, in and to" the patents here in question, "together with all claims and demands for profits and damages recoverable at law or in equity for the past infringement of said letters patent of the United States against every person, firm, corporation, or government except the Government of the United States of America." Rec. 81, 83-84.

Doubt having arisen as to the authority of the Alien Property Custodian to sell and convey to the Chemical Foundation "certain of the said choses in action, * * * and rights and claims, including rights to receive moneys by way of royalties or otherwise, as compensation for the use of patents," the President, by Executive Order dated February 13, 1920, confirmed the authority of the Alien Property Cus-

todian in that regard, and further authorized him "to confirm and ratify the said sales by the execution and delivery of a suitable instrument of confirmation," reciting as his reason that "the public interest will be best served by the elimination of *any enemy interest* adverse to American citizens arising by reason of said choses in action, or rights." Rec. 88, 89-90.

Thereafter, on March 1, 1921, the Alien Property Custodian executed a confirmatory assignment to the Chemical Foundation, ratifying the prior sales of the patents, and specifically including "all choses in action, * * * and rights and claims of every character and description growing out of and appurtenant to the ownership of said property, including (but not thereby limiting the generality of the foregoing) rights to receive moneys by way of royalties or otherwise as compensation for the use of patents, * * *, and all right, title and interest in and to the choses in action and funds referred to in section 10 subsection (f) of the Trading with the Enemy Act, as amended, acquired by the Alien Property Custodian by virtue of the seizures by which there were seized patents * * *, under which a license had theretofore been granted in accordance with the provisions of section 10 subsection (c) of said Act as amended, * * *." Rec. 90, 95. This instrument was duly recorded in the United States Patent Office. Stip., par. XV, Rec. 74.

Here is an explicit construction by the Alien Property Custodian of the original instruments of seizure as including "the choses in action and the funds referred to in section 10 subsection (f) of the Trading

with the Enemy Act," i. e., as including the right to the so-called accrued royalties.

As the War was not declared at an end until July 2, 1921, S. J. Res. 16, 42 Stat. 105, the Alien Property Custodian still had full power to seize enemy-owned property, and therefore this construction by him of the original instruments of seizure as including the right to the accrued royalties had the same effect as if he had seized that right by a new demand, the statute prescribing no particular method of seizure.

4. The former German owners of the patents contend that the second paragraph of subsection (c) of § 7 of the Trading with the Enemy Act, as amended November 4, 1918, "expressly provides that the instrument of seizure * * * shall in the case of patents 'have the same force and effect as a duly executed assignment,'" and that an assignment of a patent and of "every right, title and interest with respect thereto," would not include either the right to damages for infringements prior to the assignment or the right to accrued compensation for the use of the patent under a license prior to the assignment. Brief for Farbwerke Vormals Meister Lucius & Bruning, pp. 18-26.

This argument recognizes that unless otherwise provided by the statute a seizure of enemy property and a voluntary assignment would be governed by different rules of construction,—that, as the courts below held, a voluntary assignment, whether of a patent or other property, would be construed strictly, because the presumption is that an assignor does not intend to part with anything not plainly within the terms of his grant,

whereas an instrument of seizure of enemy-owned property would be construed liberally so as to give effect to the purpose of Congress to weaken enemy countries by depriving their supporters of power to give aid by taking over their property.

Turning to the argument itself, the short answer is that it is based on a mistaken premise. The statute does *not* provide that the instrument of seizure shall have the same force and effect as an assignment between private parties. All that it provides is that the instrument of seizure "*may* be filed, registered, or recorded in any office for the filing, registering, or recording of conveyances," and that, "*if* so filed, registered, or recorded shall impart the same notice and have the same force and effect as a duly executed conveyance, transfer, or assignment to the Alien Property Custodian so filed, registered, or recorded." 40 Stat. 1020. Obviously the purpose of this provision was merely to define the conditions under which third parties dealing with the owner of a patent which had been seized would be charged with notice of the seizure.

In addition, even as regards voluntary conveyances, we dispute the proposition that there is any general rule that an assignment of a patent, and of "every right, title and interest with respect thereto," or one of similar scope, can never be taken to include the right to sue for past infringements or for compensation for past use.

None of the cases cited in the opposing briefs goes that far. On the other hand, in the case of *May* v.

Saginaw County, 32 Fed. 629, where the owner of a patent assigned "all the right, title, interest, claims and demands whatsoever, * * * in, to, by, over and through the said improvements and letters patent," it was held by Judge Brown (later Mr. Justice Brown of this Court) that the right to damages for past infringements *was* included. Otherwise, as he states, p. 632, the language would have no effect at all, "since a bare assignment of the patent would carry with it the right to sue for all future infringements."

In *Dibble* v. *Augur*, 7 Blatch. 86, Fed. Cas. No. 3879, so much relied upon in the brief for the petitioner Farbwerke Vormals Meister Lucius & Bruning, pp. 24-25, the assignor of the patent, as Judge Brown points out in *May* v. *Saginaw County*, 32 Fed. 631, expressly reserved the right to sue for past infringements.

5. The brief for the petitioner Farbwerke Vormals Meister Lucius & Bruning states:

> "That Congress did not intend that the seizure of a patent and of every right with respect thereto should, without more, operate to seize royalties accrued prior to the seizure, is further evidenced by the amendment of 1928, confirming the right of former enemy owners of seized patents to recover 'royalties for the period prior to the sale' of such patents by the Alien Property Custodian." P. 27.

The argument is that if such royalties had been seized there would have been nothing for the amend-

ment of 1928 to operate upon. P. 27. But there is nothing to show that there may not have been cases where the instrument of seizure expressly excepted royalties that had accrued prior to the date of seizure.

Besides, even if the construction of an act of Congress could be controlled, after it has been acted upon, by any subsequently declared intention of Congress, we are not construing an act of Congress here. We are construing the language of the Alien Property Custodian; and what he intended to be included in his seizure of the patents, "and every right, title and interest with respect thereto," cannot be affected by an act of Congress passed eight years later.

Compare *Shaw* v. *Carpenter*, 280 U. S. 363, 74 L. ed. 478, where a later act of Congress was invoked to show what was intended by a clause relating to exemptions from taxation in an agreement with the Choctaw and Chickasaw Indian tribes embodied in an earlier act. This Court held:

> "Whatever was the meaning of the present exemption clause at the time of its adoption must be taken to be its effect now, since it may not be narrowed by any subsequently declared intention of Congress." 280 U. S. 367, 74 L. ed. 481. See also *Pampanga Sugar Mills* v. *Trinidad*, 279 U. S. 211, 218, 73 L. ed. 665, 669.

6. It is also contended that the Alien Property Custodian had no authority to seize the right to recover the so-called accrued royalties. This question was not raised in the Circuit Court of Appeals, nor in the petition for certiorari or the assignments of error in this

Court, and therefore for a double reason is not open. *Duignan* v. *United States*, 274 U. S. 195, 200, 71 L. ed. 996, 1000; *Herbring* v. *Lee*, 280 U. S. 111, 117, 74 L. ed. 217, 221; *Gunning* v. *Cooley*, 281 U. S. 90, 98, 74 L. ed. 720, 726. Indeed, as stated in the brief for the petitioner Farbwerke Vormals Meister Lucius & Bruning, p. 40, "In the brief in support of the petition for certiorari authority to seize this right was conceded."[1]

But assume the question to be open. Section 7 (c) of the Trading with the Enemy Act as amended by the Act of November 4, 1918, *post*, 33, authorized the seizure of enemy-owned property of all kinds, including specifically "patents, * * * choses in action, and rights and claims of every character and description * * *."

Concededly this language, "literally construed, is broad enough to authorize the seizure of the right to the recovery of royalties under Presidential licenses prior to the sale of patents seized." Brief for Petitioner Farbwerke Vormals Meister Lucius & Bruning, p. 40. The argument is that it was not the intention of Congress to include such rights, as shown by the legislative history.

The legislative history shows that the immediate object of the Act of November 4, 1918, was to make clear and adequate the powers of the Alien Property Custodian with respect to enemy-owned patents and shares

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[1] The brief in support of the petition for certiorari, filed on behalf of all the German corporations, stated: "Under the Act the Alien Property Custodian undoubtedly had authority to seize the royalties as well as the patents." P. 16.

of stock. But there is nothing whatsoever to show that Congress intended the right to recover compensation for the use of patents, either before or after seizure, to be excluded from the operation of the Act. Indeed, the description of property authorized to be seized in § 7 (c) of the Trading with the Enemy Act as originally enacted, before it was enlarged by the Act of November 4, 1918, was itself sufficient to include this right.[1]

Anyhow, as this Court recently said in rejecting a similar resort to legislative history for the purpose of giving the terms of a statute "a narrower meaning than a literal reading of them conveys,"

> "The words being clear, they are decisive. There is nothing to construe. To search elsewhere for a meaning either beyond or short of that which they disclose is to invite the danger in the one case of converting what was meant to be open and precise, into a concealed trap for the unsuspecting, or, in the other, of relieving from the grasp of the statute some whom the legislature definitely meant to include." *Van Camp & Sons Co.* v. *American Can Co.*, 278 U. S.

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[1] As originally enacted § 7 (c) provided: "If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an emeny or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian."

245, 253, 73 L. ed. 311, 313. See also *United States* v. *Missouri P. R. Co.*, 278 U. S. 269, 278, 73 L. ed. 323, 377.

Here, moreover, not only does the right to recover the so-called accrued royalties fall within the plain description of the property authorized to be seized, but including it accords with the fundamental purpose of the Trading with the Enemy Act "to weaken enemy countries by depriving their supporters of their properties." *United States* v. *Chemical Foundation*, 272 U. S. 1, 9-10, 71 L. ed. 131, 140.

Point II.

The German corporations having been divested of ownership of the patents in question prior to the commencement of the present suits, those suits cannot be maintained under § 10 (f) of the Trading with the Enemy Act as originally enacted even though the right of action against the du Pont Company for the use of the patents prior to their seizure had remained vested in the German corporations, and § 19 of the Settlement of War Claims Act of 1928 cannot be construed as providing otherwise without makng it unconstitutional.

Section 10 (f) of the Trading with the Enemy Act as originally enacted provided that:

> "The *owner* of any patent, trade-mark, print, label, or copyright under which a license is

> granted hereunder may, after the end of the War and until the expiration of one year thereafter,[1] file a bill in equity against the licensee in the district court of the United States * * *, for recovery from the said licensee for all use and enjoyment of the said patented invention, trademark, print, label, or copyrighted matter." [Italics ours.]

No one other than the owner of the patent, trademark, label or copyright was authorized to bring such a suit. Indeed, as before stated, by another provision of the statute, § 10 (c), suit by anyone else was expressly barred.

It was doubtless to meet this requirement of the statute that the German corporations alleged in their bills of complaint that they were the owners of the patents when the suits were brought—June 30, 1922. Rec. 35, 37, 39. Subsequently, however, the seizure of the patents by the Alien Property Custodian in February and March, 1919, and their sale to the Chemical Foundation on April 10, 1919, were upheld by this Court in *United States* v. *Chemical Foundation,* 272 U. S. 1, 71 L. ed. 131.

It follows that even though the right of action against the du Pont Company for the use of the patents prior to their seizure by the Alien Property Custodian had remained vested in the German corporations, these suits would be barred because prior to their commencement the German corporations had

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[1] The War ended July 2, 1921. S. J. Res. 16, 42 Stat. 105.

ceased to be the owners of the patents by reason of the Alien Property Custodian's seizure.

This was decided in *Hicks* v. *Anchor Packing Co.*, 16 F. (2d) 723. There an Hungarian company, as the owner of a trade-mark at the time it was seized by the Alien Property Custodian, claimed to be still the owner within the meaning of § 10 (f) of the Trading with the Enemy Act, and as such entitled to recover from the Federal Trade Commission's licensee compensation for the use of the trade-mark. The Circuit Court of Appeals, Third Circuit, held not, citing the decision of this Court in *United States* v. *Chemical Foundation, Inc.*, 272 U. S. 1, 71 L. ed. 131, and saying:

> "From this it is clear that the Hungarian company, when the custodian seized its trade-mark, parted with its ownership and also with its claim to the proceeds of the license for its use. We hold that at the time this suit was brought the Hungarian Company was not the 'owner' within the meaning of § 10 (f) of the Act." 16 F. (2d) 727.

But, it is said, that § 10 (f) was amended by § 19 of the Settlement of War Claims Act of 1928, so as to provide that any suit brought thereunder, within the time limited therein, shall be considered as having been brought by the owner of the patent "if brought * * * by the person who was the owner thereof immediately prior to the date such patent * * * was seized or otherwise acquired by the Alien Property Custodian."

In 1928, however, the time limited by § 10 (f) for bringing suit against the Federal Trade Commission's

licensee—one year after the end of the War—had long since expired.

And where, as here, the statute which creates a liability limits the time within which suit may be brought to enforce it, "the time within which the suit must be brought operates as a limitation of the liability itself as created, and not of the remedy alone," and consequently if suit be not brought within the prescribed time the liability itself is extinguished. *The Harrisburg,* 119 U. S. 188, 214, 30 L. ed. 358, 362.

Section 10 (f) further provided that if suit were not brought by the owner of the patent within one year after the end of the War,

> "then the licensee shall not be liable to make any further deposits, and all funds deposited by him shall be repaid to him on order of the alien property custodian."

thus making doubly clear the intention of Congress that in such event the obligation itself should become extinguished.

It follows that if § 19 of the Settlement of War Claims Act of 1928 be construed as giving life to the suits brought against the du Pont Company by the German corporations when they were no longer the owners of the patents, and therefore without any right to sue, *ante,* 11, it would, by reinstating a liability which had become extinguished, deprive the du Pont Company of its property without due process of law in contravention of the Fifth Amendment.

In *Danzer & Co.* v. *Gulf & Ship Island R. Co.,* 268 U. S. 633, 69 L. ed. 1126, the question was whether

§ 206 (f) of the Transportation Act, providing that "the period of Federal control shall not be computed as a part of the periods of limitation," was applicable in cases where the period of limitation had already expired, and if so, whether it was constitutional.

The Interstate Commerce Commission, overruling the carrier's contention "that plaintiff's right expired before the passage of the Transportation Act, and was not revived by § 206 (f)," 268 U. S. 634, 60 L. ed. 1128, awarded reparation. Suit was brought on the award and the carrier demurred "on the ground, among others, that § 206 (f), as construed and applied by the Commission, was unconstitutional; and that so to renew or revive the cause of action, which had expired before the passage of the Transportation Act, was to take defendant's property without due process of law, in contravention of the 5th Amendment." 268 U. S. 635, 69 L. ed. 1128.

The District Court sustained the demurrer and this Court affirmed the decision, saying:

> "Plaintiff's cause of action was created and limited by the Interstate Commerce Act. . . .
>
> "Plaintiff's right to file his claim with the Commission had expired several months before the passage of the Transportation Act. But, if the period of Federal control is to be excluded, the complaint was filed within time. During the period between such expiration and the passage of the Transportation Act, plaintiff had no right to file a claim with the Commission, and had no cause of action. *It is settled by the decisions of this Court that the lapse of time not only*

barred the remedy, but also destroyed the liability of defendant to plaintiff." 268 U. S. 635-636, 69 L. ed. 1128. [Italics ours.]

The opinion concludes as follows:

"Section 206 (f) will not be construed retroactively to create liability. *To give it that effect would be to deprive defendant of its property without due process of law, in contravention of the 5th Amendment.*" 268 U. S. 637, 69 L. ed. 1129. [Italics ours.]

The principle of this decision is applicable here.

Conclusion.

The decrees of the Circuit Court of Appeals should be affirmed.

Respectfully submitted,

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March, 1931.

APPENDIX.

Statutes Involved.

Section 10 (f) of the Trading with the Enemy Act, under which the suits were brought, provided:

> "The owner of any patent, trade-mark, print, label, or copyright under which a license is granted hereunder may, after the end of the war and until the expiration of one year thereafter, file a bill in equity against the licensee in the district court of the United States for the district in which the said licensee resides, or, if a corporation, in which it has its principal place of business (to which suit the Treasurer of the United States shall be made a party), for recovery from the said licensee for all use and enjoyment of the said patented invention, trade-mark, print, label, or copyrighted matter: *Provided, however,* That whenever suit is brought, as above, notice shall be filed with the alien property custodian within thirty days after date of entry of suit: *Provided further,* That the licensee may make any and all defenses which would be available were no license granted. The court on due proceedings had may adjudge and decree to the said owner payment of a reasonable royalty. The amount of said judgment and decree, when final, shall be paid on order of the court to the owner of the patent from the fund deposited by the licensee, so far as such deposit will satisfy said judgment and decree; and the said payment shall be in full or partial satisfaction of said judgment and decree, as the facts may appear; and if, after

payment of all such judgments and decrees, there shall remain any balance of said deposit, such balance shall be repaid to the licensee on order of the alien property custodian. If no suit is brought within one year after the end of the war, or no notice is filed as above required, then the licensee shall not be liable to make any further deposits, and all funds deposited by him shall be repaid to him on order of the alien property custodian. Upon entry of suit and notice filed as above required, or upon repayment of funds as above provided, the liability of the licensee to make further reports to the President shall cease.

"If suit is brought as above provided, the court may, at any time, terminate the license, and may, in such event, issue an injunction to restrain the licensee from infringement thereafter, or the court, in case the licensee, prior to suit, shall have made investment of capital based on possession of the license, may continue the license for such period and upon such terms and with such royalties as it shall find to be just and reasonable." (40 Stat. 421-422.)

Section 19 of the Settlement of War Claims Act of 1928 amended the foregoing by adding the following new paragraph:

" 'In the case of any such patent, trade-mark, print, label, or copyright, conveyed, assigned, transferred, or delivered to the Alien Property Custodian or seized by him, any suit brought under this subsection, within the time limited therein, shall be considered as having been

brought by the owner within the meaning of this subsection in so far as such suit relates to royalties for the period prior to the sale by the Alien Property Custodian of such patent, trademark, print, label, or copyright, if brought either by the Alien Property Custodian or by the person who was the owner thereof immediately prior to the date such patent, trademark, print, label, or copyright was seized or otherwise acquired by the Alien Property Custodian.'" (45 Stat. 277.)

Section 10 (c) of the Trading with the Enemy Act, under which the du Pont Company got its license to use the patents in question, provided:

"Any citizen of the United States or any corporation organized within the United States desiring to manufacture, or cause to be manufactured, a machine, manufacture, composition of matter, or design, or to carry on, or to use any trade-mark, print, label or cause to be carried on, a process under any patent or copyrighted matter owned or controlled by an enemy or ally of enemy at any time during the existence of a state of war may apply to the President for a license; and the President is hereby authorized to grant such a license, nonexclusive or exclusive as he shall deem best, provided he shall be of the opinion that such grant is for the public welfare, and that the applicant is able and intends in good faith to manufacture, or cause to be manufactured, the machine, manufacture, composition of matter, or design, or to carry on, or cause to be carried on, the process or to use the trade-mark, print, label or copyrighted mat-

ter. The President may prescribe the conditions of this license, including the fixing of prices of articles and products necessary to the health of the military and naval forces of the United States or the successful prosecution of the war, and the rules and regulations under which such license may be granted and the fee which shall be charged therefor, not exceeding $100, and not exceeding one per centum of the fund deposited as hereinafter provided. Such license shall be a complete defense to any suit at law or in equity instituted by the enemy or ally of enemy owners of the letters patent, trade-mark, print, label or copyright, or otherwise, against the licensee for infringement or for damages, royalty, or other money award on account of anything done by the licensee under such license, except as provided in subsection (f) hereof." (40 Stat. 420-421.)

Section 10 (d) provided:

"The licensee shall file with the President a full statement of the extent of the use and enjoyment of the license, and of the prices received in such form and at such stated periods (at least annually) as the President may prescribe; and the licensee shall pay at such times as may be required to the alien property custodian not to exceed five per centum of the gross sums received by the licensee from the sale of said inventions or use of the trade-mark, print, label or copyrighted matter, or, if the President shall so order, five per centum of the value of the use of such inventions, trade-marks, prints, labels or copyrighted matter to the licensee as established by the President; and sums so paid

shall be deposited by said alien property custodian forthwith in the Treasury of the United States as a trust fund for the said licensee and for the owner of the said patent, trade-mark, print, label or copyright registration as hereinafter provided, to be paid from the Treasury upon order of the court, as provided in subdivision (f) of this section, or upon the direction of the alien property custodian." (40 Stat. 421.)

By an Executive Order dated October 12, 1917, pursuant to § 5 (a) of the Trading with the Enemy Act, the powers and duties of the President under §§ 10 (c) and 10 (d) were delegated to the Federal Trade Commission. (Rec. 96.)

Section 7 (c) of the Trading with the Enemy Act, as amended by the Act of November 4, 1918, under which the patents were seized by the Alien Property Custodian, provided:

"'If the President shall so require any money or other property including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade marks, choses in action, and rights and claims of every character and description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized

by the Alien Property Custodian; and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this Act.

* * * * * * *

"'The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this Act, and in the event of sale or other disposition of such property by the Alien Property Custodian, shall be limited to and enforced against the net proceeds received therefrom and held by the Alien Property Custodian or by the Treasurer of the United States.'". (40 Stat. 1020, 1021.)

The fourth paragraph of § 12 of the Trading with the Enemy Act as amended by the Act of March 28, 1918, under authority of which the Alien Property Custodian sold the patents to the Chemical Foundation, provided:

"'The alien property custodian shall be vested with all the powers of a common-law trustee in respect of all property, other than money, which has been or shall be, or which has been or shall be required to be, conveyed, transferred, assigned, delivered, or paid over to him in pursuance of the provisions of this Act, and, in addition thereto, acting under the supervision and direction of the President, and under such rules and regulations as the Presi-

dent shall prescribe, shall have power to manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights or powers which may be or become appurtenant thereto or to the ownership thereof in like manner as though he were the absolute owner thereof: *Provided,* That any property sold under this Act, except when sold to the United States, shall be sold only to American citizens, at public sale to the highest bidder, after public advertisement of time and place of sale which shall be where the property or a major portion thereof is situated, unless the President stating the reasons therefor, in the public interest shall otherwise determine: *Provided further,* That when sold at public sale, the alien property custodian upon the order of the President stating the reasons therefor, shall have the right to reject all bids and resell such property at public sale or otherwise as the President may direct. Any person purchasing property from the alien property custodian for an undisclosed principal, or for re-sale to a person not a citizen of the United States, or for the benefit of a person not a citizen of the United States, shall be guilty of a misdemeanor, and, upon conviction, shall be subject to a fine of not more than $10,000, or imprisonment for not more than ten years, or both, and the property shall be forfeited to the United States. It shall be the duty of every corporation incorporated within the United States and every unincorporated association, or company, or trustee, or trustees with the United States issuing shares or certificates representing beneficial interests

to transfer such shares or certificates upon its, his, or their books into the name of the alien property custodian upon demand, accompanied by the presentation of the certificates which represent such shares or beneficial interests. The alien property custodian shall forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such property or rights so sold by him.' " 40 Stat. 460.)

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1930.

No. 179. October Term, 1930.

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORM. ROESSLER, and BADISCHE-ANILIN & SODA-FABRIK,
Petitioners,

against

CHEMICAL FOUNDATION, INC.; E. I. DUPONT DENEMOURS & Co., and WALTER O. WOODS, as Treasurer of the United States,
Respondents.

No. 180. October Term, 1930.

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING,
Petitioner,

against

E. I. DUPONT DENEMOURS & Co., and WALTER O. WOODS, as Treasurer of the United States,
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No. 181. October Term, 1930.

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORM. ROESSLER,
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E. I. DUPONT DENEMOURS & Co., and WALTER O. WOODS, as Treasurer of the United States,
Respondents.

No. 182. October Term, 1930.

BADISCHE-ANILIN & SODA-FABRIK,
Petitioner,

against

E. I. DUPONT DENEMOURS & Co., and WALTER O. WOODS, as Treasurer of the United States,
Respondents.

BRIEF ON BEHALF OF PLAINTIFF-RESPONDENT, THE CHEMICAL FOUNDATION, INC.

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IN THE

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FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORM. ROESSLER, and BADISCHE-ANILIN & SODA-FABRIK,

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E. I. DUPONT DENEMOURS & CO. and WALTER O. WOODS, as Treasurer of the United States,

Respondents.

No. 182. October Term, 1930.

BRIEF ON BEHALF OF PLAINTIFF-RESPONDENT, THE CHEMICAL FOUNDATION, INC.

NOTE: *This brief was written in answer to that filed by the Petitioner Farbwerke vormals Meister Lucius & Bruning, being the only brief filed at the time. Since then, and within less than one week of the time when counsel for the Foundation are advised that these cases will be brought on for hearing, they are informed that a brief has been filed on behalf of the Petitioners Badische-Anilin & Soda-Fabrik and Deutsche Gold & Silber Scheide Anstalt, and have been served with a copy thereof. Leave of the Court will be asked, therefore, to file a supplemental brief on behalf of the Foundation in answer to the brief last mentioned.*

Statement.

While the Petitions of all of the German Petitioners and the brief filed by the Petitioner Farbwerke vormals Meister Lucius & Bruning do not ostensibly attack the decree below in favor of the Chemical Foundation, their contentions, if sustained, would deprive it of one substantial, if relatively unimportant, part of the relief granted to it by those decrees. The Courts below held (Dist. Ct., R. 136-148, 29 F. (2nd) 597; Cir. Ct. of App., R. 181-195; 39 F. (2d) 366) that the Foundation was entitled to recover from the Dupont Company, the licensee, for all use and enjoyment of the licensed patents at all times, both before and after the patents were sold to it; that as the Foundation had, in its bill, limited the claim to compensation for use and enjoyment had after it had become the owner of the licensed patents, its recovery should be limited to that period; but that this limitation did not extend to the Foundation's rights in respect to the fund accumulated in the Treasury from the tentative royalty paid in by the licensee under the Act to

secure payment of whatever decree might be rendered in the suit, the whole of which fund was held available to the Foundation as such security, whenever accrued. If the Petitioners are right, the fund may be held to be security for claims in addition to those of the Foundation. Accordingly the Foundation is directly interested in sustaining the decree below.

Facts.

The statement of facts in the brief of the Petitioner Farbwerke vormals Meister Lucius & Bruning requires some amplification. The license in question was issued to the Dupont Company by the Federal Trade Commission on January 21, 1918. As originally issued it required the licensee to pay to Alien Property Custodian a "royalty" of 5% of the net profits derived from the sale of products resulting from the licensed use (R. 27-32). This "royalty" did not, of course, purport to represent compensation to the owner of the patents for the value of the use, but was required by the express terms of Section 10(d) of the Act to be paid and held as a trust fund for the joint benefit of the owner and the licensee, to secure whatever judgment might be rendered in a suit brought after the end of the war by the owner to recover compensation for such use. No payments were ever made by the licensee while the license stood in this original form, and it does not appear what, if any, use the licensee made of the patents during this period.

While the license remained as originally issued, the patents were seized by the Custodian. The instruments of seizure, effective February 3, 1919 and March 22, 1919 were in substantially identical form and seized not only the patents, but also

> "every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof" (R. 76, 78, 80).

The patents and appurtenant rights thus seized, including as we contend and the Courts below held, the present rights of action, were conveyed on April 10th, 1919 to the Foundation. The original conveyance clearly covered all that had been seized (R. 81-85). It assigned

> "1. Each of the letters patent of the United States and applications for letters patent of the United States enumerated in Schedule A hereto annexed, together with all claims and demands for profits and damages recoverable at law or in equity for the past infringement of said letters-patent * * * *All as more specifically described and set forth in the requirements or demands relating to said letters patent* * * * issued by said A. Mitchell Palmer, as Alien Property Custodian, or by me as Alien Property Custodian, *without any reservation or qualification whatsoever* * * * and subject only to the provisions of a certain release to the United States of America, bearing even date herewith, and to the rights of citizens of the United States or of friendly nations as set forth in the requirements or demands * * *" (Italics ours).

The Petition asserts that "neither the instruments of seizure (R. 75-81) nor the assignment (R. 81-85) expressly covered the accrued royalties". This statement, so far as it relates to the conveyance to the Foundation is, we submit, incorrect, since long before the right to bring the present suits accrued, the Custodian, by his confirmatory assignment of March 1st, 1921 expressly confirmed the conveyance of the rights of action as included in the original assignment, and re-conveyed them *de novo* (R. 90-96). This last-mentioned instrument was executed in pursuance of an Executive Order of President Wilson dated February 13, 1920 (R. 88-90) which stated that it had been the intention of the earlier Executive Orders, under which the Custodian had made the sale, to authorize the sale of these rights of action, and then specifically authorized him to make and confirm such sales. (R. 88-90). The statement of intention of the earlier Orders

was expressed in the Executive Order of February 13, 1920 in the following unequivocal language (R. 89):

> "Whereas it was the intention of said Executive Orders to authorize the said Custodian to sell and convey thereunder, all choses in action, rights, interests and benefits under agreements and rights and claims of every character and description including rights to receive moneys by way of royalties or otherwise as compensation for the use of patents, trade-marks, or trade-names, which the Alien Property Custodian may have seized * * *."

The Executive Order of February 13, 1920 thereupon proceeded to recite that doubt had nevertheless arisen as to the authority of the Custodian in the matter, expressly confirmed such authority, and set forth as an added reason therefor (R. 90) that

> "* * * the public interest will be best served *by the elimination of any enemy interest* adverse to American citizens arising by reason of said choses in action, or rights, interests and benefits under agreements *and by the devoting of any payment made by reason of said choses in action or under said agreements by The Chemical Foundation, Inc., to the promotion of the objects stated in its charter.*" (Italics ours.)

Under the authority again so conferred by this Order the Custodian, on March 1, 1921, executed the confirmatory assignment above referred to, by which he specifically confirmed and ratified the sale and assignment of, and did thereby (R. 95)—

> "* * * * sell, assign, transfer and set over to said The Chemical Foundation (Inc.), all choses in action, rights, interests and benefits under agreements and *rights and claims of every character and description growing out of and appurtenant to the ownership of said property, including* (but not thereby limiting the generality of the foregoing) *rights to receive moneys by way of royalties*

or otherwise as compensation for the use of patents, copyrights and trade-marks, *and all right, title and interest in and to the choses in action and the funds referred to in Section 10, sub-section (f) of the 'trading with the enemy act as amended,* acquired by the Alien Property Custodian by virute of *the seizures by which there were seized patents, copyrights, or trade-marks, under which a license had theretofore been granted in accordance with the provisions of Section 10, sub-section (c) of said act, as amended* * * *." (Italics ours.)

Nearly a year after the sale to the Foundation, on January 14th, 1920, the Federal Trade Commission amended the license so as to make the security-royalty, payable thereunder, 2% of the gross instead of 5% of the net receipts from and after August 1st, 1919 (R. 32). Thereafter the Dupont Co., as licensee, paid, under these terms, the sum of $61,884.98 which its answer (R. 43, 44) represents to be 2% of the gross amount received by it from August 1st, 1919 to September 1st, 1920, when the Federal Trade Commission cancelled the license. This fund is still held in the Treasury as security to meet the judgments in suits brought by the "owner of the patents". Under the terms of the Act any part of it not needed for the purpose is to be returned to the licensee.

The bills of complaint of the three German plaintiffs assert that notwithstanding the seizures and sales, they are the "owners of the patents" to whom the Act grants the right of action for use and enjoyment of the patents, whenever such use and enjoyment were had. They concede, however, that their claim must be limited to compensation for use before the sale (Petition, 3-4) and they do not question the Foundation's right to recover for use and enjoyment after the sale. The Foundation's bill claims compensation only for use after the sale; but its position is, and the lower Courts have held, that the right to compensation for all use was effectively seized, and was sold to it with the patents, and that its failure to claim the compensation for

use prior to the sale is an intentional waiver, destructive of that right, which accordingly has ceased to exist in favor of any one. The Foundation has not, however, waived any part of the right to avail itself of the security-royalties on deposit for the benefit of the suing "owner", and as it is the only such owner who can now exist it claims an exclusive right to the security of the whole fund. The Foundation also contends that the concession that the Foundation has the rights for the period after sale is a concession of the validity of the whole seizure, for both periods.

I.

The Circuit Court of Appeals did not err in holding that the accrued royalties (meaning the right to sue for the value of licensed use and enjoyment of the patents prior to seizure) were seized and sold to The Chemical Foundation.

This, the Petitioner's main contention, is really irrelevant, since the question whether the "accrued royalties" were or were not seized cannot affect the issue. As will appear in our second point, the right to sue was granted only to the "owner of the patents" at the time of suit. It therefore passed with the patents, which were, as this Court has itself held, validly seized and sold to the Chemical Foundation. No separate seizure or sale of the rights was therefore necessary.

The Courts below, however, held that the instruments of seizure and sale did in fact include the rights, if separate seizure was either possible or necessary. The reasoning of both opinions on this point is cogent, and needs no support from us except brief comment on the Petitioner's present attacks upon it. Their main contention on this point is that since this Court has frequently held that in a voluntary as-

signment between private parties phrases like "all right, title and interest *in*" the assigned patent do not include the right to sue for past infringement, the words of the seizure and of the original assignment in the case at bar cannot carry the right to sue for past use and enjoyment. It is argued that Section 7(c) of the Trading with the Enemy Act, in providing that a seizure of a patent "shall have the same force and effect as a duly executed * * * assignment to the Alien Property Custodian," limits the effect of an instrument of seizure to that of a private conveyance, and thus brings the present seizures within the authority of the decisions in question.

Both branches of this argument appear fallacious. In the first place the assumption that the clause which gives the Custodian's seizure "the same effect as" an ordinary assignment, means that it shall have *only* such effect, and no other, is both gratuitous and unsound. The obvious purpose of Section 7(c) as a whole was to cause seizures to vest title in the Custodian in the most complete manner possible, and the first paragraph of the section fully accomplished that result. That paragraph provides that patents, etc. shall, if required, be conveyed to the Custodian, "or the same may be seized" by him. This is a plenary grant of the power to seize. The second paragraph of the section was evidently intended merely to provide for proper recordation of instruments of seizure. It prescribes, not the effect of the instrument but the result of recording it. The fact that it contained a clause, inserted out of extra caution, to make sure that the seizure should cover all that a private assignor could convey, shows, not an intention to limit the effect of the complete seizures previously provided for, but a design to make them all-embracing. The Act has uniformly been held entitled to liberal construction, and such a limiting effect could only be given, if at all, by the strictest possible method of interpretation.

But if the Act did mean to limit the effect of the language of a seizure to that of a private assignment, the cases referred

to would not be applicable. None of the assignments discussed in these cases use the language appearing in the instruments of seizure which comprehends the patents involved and

> "every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof."

This language is sufficiently broad to cover the rights in question for many reasons, a few of which will be noted.

(a) The words "and every right, title and interest with respect thereto" to be given any effect at all, must be held to include claims under Section 10 of the Act for past use and enjoyment of the patents, since every other conceivable interest in the subject was specifically covered either by the phrases which directly seized the patents themselves, or by those which seized the right to sue for past infringement. Effect should be given, if possible, to all parts and every clause of an instrument.

(b) These words are followed by the phrase *"including* all damages * * * for past infringement". The word "including" demonstrates that the preceding words were intended to have the broadest kind of meaning, inclusive of claims of every character.

(c) The language of Section 7(c) as amended, authorizing the seizure of patents and choses in action, did not specifically designate by description the particular choses in action here involved. Yet the authority to seize the same has, until the writing of the final point of the Petitioner's present brief, always been conceded, obviously because they were covered by the broad language used. The broad language used in the instrument of seizure should be given a like effect (see Point IV, *infra*).

(d) The patent was not seized with rights, etc. "thereto", but with every right, title and interest *"with respect* thereto".

Such phrases has been held to include references or relations exceedingly indirect. *People* v. *Clark*, 9 N. Y. 349; *Brett* v. *Rogers*, 1897, 1 Q. B. 525; *Tatam* v. *Reeve*, 1893, 1 Q. B. 44. See also *May* v. *Logan County*, 30 Fed. 250, and specially *May* v. *Saginaw County*, 32 Fed. 629, wherein the same instrument of conveyance referred to in *May* v. *Juneau County*, 30 Fed. 241, cited by the Petitioners was construed to the contrary. The Court in *May* v. *Saginaw County* also distinguishes the case of *Dibble* v. *Augur*, 7 Blatch. 86, likewise relied upon by the Petitioners.

As was said by the Circuit Court of Appeals in this case (R. 189):

> "Royalties are a very real 'interest' in, or in respect to, a patent and the right to recover royalties is a very real 'right.'"

But even if the language of the seizure had been identical with that in the cases relied on, the latter would not apply. They are decisions interpreting the meaning of instruments executed by private persons in business transactions. In such cases the Court, as in the interpretation of all grants, seeks to give effect to the actual intention of the party who uses the language which it is interpreting, and accordingly construes the granting language strictly, knowing that no grantor means to give up, and no grantee expects to receive, anything not plainly specified. Here, however, the court is interpreting, as the Circuit Court of Appeals clearly showed, an instrument of exactly the opposite character, expressing the intention of the seizor, which would naturally be as broad as possible. To the interpretation of such an instrument constructions applied to private grants afford no guide.

II.

The Circuit Court of Appeals did not err in holding that the German Petitioners were not the owners of the patents within the meaning of that part of the Act defining by whom and when suit should be brought.

The argument of the Petitioner to the contrary of this proposition (if, indeed, it is open to argument on the present record, from lack of an appropriate Specification of Error), is clearly without merit. The language of the statute is plain, simple, and unambiguous, requiring no construction. It states that at a particular time, "the owner of any patent" of the class in question may sue. When Congress used the word "owner" with reference to a particular time it used a word which can accurately and literally apply to but one individual or group. At any given moment, the ownership of any piece of property is normally if not invariably single. At a specified moment a patent can have but one owner or group of owners. Literally, then, the word must apply to the owner at the date of suit, since no other person would then meet the definition of the person authorized to sue. Any other meaning would be abnormal. To construe the word as referring to one who had ceased to be the owner before he could attempt to exercise the rights granted to the owner, would be as unnatural as to construe the powers which the Act confers upon the President, as conferred upon ex-Presidents. It is indeed a recognized principle of the interpretation of statutes that when any qualification, such as ownership, is prescribed as a pre-requisite to suit, the statute prescribing it is to be construed, unless strong indications of a contrary intent appear, as requiring the qualification at the time of suit.

Reising v. *Deutsche D. G. Hansa*, 15 Fed. (2nd), 259 (C. C. A. 2nd).

Furthermore, the recovery for which "the owner of any patent" is authorized to sue is, in the language of the Act, "for *all* use and enjoyment of said patented invention" (italics ours). The use of the word "all" implies, necessarily, *one* suit by *one* owner.

The construction which the Petitioner urges is so foreign to this plain and literal meaning of the language, that it could only commend itself if supported by convincing evidence from other parts of the Act, that it was actually intended to grant the right to sue, not merely to the owner of the patent at the time of suit, but also to former owners. No such evidence, however, is adduced. On the contrary the last clause of Section 10(*f*) itself furnishes a conclusive answer to the whole contention. That clause empowers the court, in the suit, to settle the whole future of the license, and thus of the patent and its value. As this is a matter in which the owner of the patent at the time of suit is vitally interested, and one in which former owners have no interest whatever, the latter cannot have been intended as included within the grant. A seizure, identical in all essentials, was so construed in *Hicks* v. *Anchor Packing Co.*, 16 Fed. (2d) 723. This Court has itself treated the seizures and sales as valid and as including the rights in question. *U. S.* v. *Chemical Foundation*, 272 U. S. 1, 9-10, 15-16.

III.

The Circuit Court of Appeals did not err, as urged in the Petitioner's third Specification of Error, in holding the Amendment of 1928 unconstitutional.

The Chemical Foundation is interested in this question because the German Petitioners base upon the Amendment of 1928 their contention that they, with respect to the right to sue for use and enjoyment of the patents before seizure, are "owners" entitled to sue, and are therefore entitled to

have these rights as well as the similar rights of the Foundation for the period after seizure secured by the fund paid in under the license by the licensee.

For the following reasons, we submit, this contention is unfounded.

(*a*)

It clearly appears that the entire payment made by the licensee was made with respect to use and enjoyment had after August 1st, 1919, the date as of which the license as amended called for royalty at the rate of two per cent. of the gross. No payments were made under the original license. All payments were therefore made with reference to use and enjoyment after April 10th, 1919—to wit, after August 1st, 1919. The whole fund thus arose after the Foundation became the "owner", and was paid exclusively for use and enjoyment while the Foundation was the "owner".

(*b*)

The Foundation is the only party who as "owner" can sue, and is therefore the only party entitled to the benefit of the security fund.

Long before the suits were brought, the former ownership of the Germans was completely and permanently divested (*Hicks* v. *Anchor Packing Co., supra; Junkers* v. *Chemical Foundation,* 287 Fed. 597). The German plaintiffs, therefore, were not qualified as "owners", to sue. No one else having sued, the right of the Foundation to such portion of the fund as may be necessary to secure its rights was and is exclusive.

The amendment of March 10th, 1928 (Settlement of War Claims Act, 1928, Section 19) did not change this result. If, as the German plaintiffs contend, it created, or reinstated, for their benefit, causes of action which had either never existed or had ceased to exist, it is, as the learned trial Court held, unconstitutional. While Congress may, in some cases, by removing the bar of a statute of limitations, revive

a barred claim which has an independent origin and is subject to no other defect, it cannot revive such a claim when the limitation was a part or term of the original right, and that right was created only by the statute which imposed the limitation.

Danzer v. *Gulf R. R. Co.*, 268 U. S. 633.

In that case the plaintiff, in 1921, sued for a misrouting by the defendant which had occurred four years previously. The right of action was created by the Interstate Commerce Act, which imposed upon it a two year limitation. The plaintiff contended that the Transportation Act of 1920, § 206(*f*), 41 Stat. 456, had revived causes of action barred by this provision, by extending the period of limitation to include the duration of Federal control of the railroads. The court held that to give it that effect would render the statute unconstitutional as depriving the defendant of its property without due process of law.

The principles of this decision are precisely applicable here. Under the law as it stood judicially determined before the March, 1928 amendment, none of the German plaintiffs had a right to sue. They would have been entitled to bring the suits they brought only if they had been "owners" of the patents. Having ceased to be owners before they sued, their suits were nullities. The Foundation, being the owner, had brought a well-founded suit, complying with all the terms of the right of action as created by the statute. The attempt of Congress to change those terms (if the March, 1928 amendment was such an attempt) would clearly impair the vested rights of the parties in precisely the manner condemned in the *Danzer* case.

The German Petitioners, seeking to distinguish the *Danzer* case, assert that the statute there under consideration created the right of action on which it imposed the limitation, and that in the case at bar it did not, since, when the Act was passed, the German patent owners already had a right to sue for use of the patented invention by others. This attempted distinction is, however, unsound. The particular

right of action on which the German suits are based did not exist at the time of the enactment of the Act. From the entry of the United States into the war, until the Act was passed, the German owners, as enemies, could not sue at all. If they had been able to sue, they would have been suing on an unsecured claim, instead of having the benefit of the security provided by the Act. If the Act had not been passed, there would have been no cause of action, since it must be presumed that the defendant duPont Co. would not, but for the license granted under the Act, have used the patents. Thus the actual rights claimed in the German suits had their origin in the Act alone, as clearly as the cause of action in the *Danzer* case arose out of the statute there considered; and the limitations imposed on those rights in their creation cannot be changed to the prejudice of those who have dealt with the situation relying on the statute as it stood.

As a second feature distinguishing the case at bar from the *Danzer* case, it is argued that there no suits had been commenced when the statute attempted to lift the bar of the expired limitation, while here suits had been begun. This difference, of course, exists, but does not seem to us to affect the situation. Under the law, as declared by this Court, the right of action set up in the suits did not exist at the time when they were brought. They were mere nullities—not because the statutory limitation had expired but because the plaintiffs were not qualified as "owners of the patents", to sue. The position of the plaintiffs was thus far weaker than that of one who, like the plaintiff in the *Danzer* case, has a claim valid in every respect except that of timely presentation.

The attempt of the 1928 amendment, as construed by the German Petitioners, to revivify—or rather vivify—their suits, is no mere effort to correct a technical defect, such as existed in the cases in which relief has been granted to one who sued in the wrong capacity. In those cases a clear right of action existed, and was vitiated only by a blunder in pleading, the correction of which hurt no one except the defendant, whose moral if not legal obligation was complete. Here, unless

the doctrine of *Hicks* v. *Anchor Packing Co.* is erroneous, there was no right of action at all. The Amendment, if it is to have the effect contended for, would create a right of action where none had ever existed. What the German Petitioners seek to have it accomplish is comparable to the following: A, holding B's note not yet due, goes into bankruptcy, and the note, not yet suable, passes by operation of law, into other hands. Notwithstanding that he has ceased to be the owner of the note A, after maturity, sues upon it. After the courts have decided that in an identical situation a plaintiff situated like A has no cause of action, and after B in the suit has pleaded this defense, and after the Statute of Limitations has run against the commencement of a new suit, A procures legislation that, notwithstanding all these facts, he be deemed the owner of the note, and that his suit on it be reinstated.

The case of *Danforth* v. *Groton Co.*, 178 Mass. 472, is cited as authority for the proposition that the mere fact that the limitation and the cause of action are both contained in the same statute is not determinative (German brief, p. 34). In that case, however, the plaintiff's real right to relief was not the creature of the statute, but a fundamental constitutional privilege—the right not to have his property taken from him without compensation. Far from conferring on him that right, the statute sought to restrict it by what the court considered a useless formality; and the decision merely holds that a legislature which could impose such a restriction could waive it.

Robinson v. *Robins Co.*, 238 N. Y. 271, cited (German brief, p. 34) as authority for the legislative power to remove the bar of a statutory limitation, arose out of facts so unusual as to make the decision inapplicable elsewhere, and this the opinion itself asserts (p. 280). It represented an honest attempt by the legislature to relieve a plaintiff, who, misled by a decision of the state courts, held erroneous only after the harm had been done, had pursued the wrong remedy for an unquestionable injury. It represents merely an extreme instance of the correction of a technical defect, and has no

application to a statute which seeks, not to remove an accidental barrier to a valid right, but to create a right where none existed.

In answer to our contention in this Point the German Petitioners may argue that no property of the Foundation is taken by the 1928 Amendment, because the Foundation claims to recover only for the period after assignment, while the Amendment is limited to the period before assignment. This may be sound as to the Foundation's substantive claim to compensation for use and enjoyment, but is clearly unsound as to its adjective claim to the benefit of the security fund paid in by the licensee. While we contend that in fact that fund arose out of use and enjoyment after assignment, it is plain that, however it arose, the Foundation, as the sole possible plaintiff qualified as "owner of the patents" to sue, is entitled to the benefit, as security, of the whole fund provided to secure the decree in the suit so brought. This is a substantial right, which was fully vested in the Foundation long before the 1928 Amendment was enacted. It is property of which the owner cannot under the Fifth Amendment be deprived without due process of law. The Foundation is therefore directly affected by and interested in the question of the statute's constitutionality.

The Petitioner Farbwerke vormals Meister Lucius & Bruning also argues (its Brief, pp. 36-7) that the Fifth Amendment does not limit the 1928 Amendment because the latter, as a legislative Settlement of War Claims, was an exercise of the War power. This contention was, we submit, conclusively refuted by the Courts below in their opinions, in reasoning to which little can be added. As presented in the trial Court, however, the appellant's argument placed its emphasis on the power of Congress to make rules regarding captures by sea and land. The emphasis in the Circuit Court of Appeals and in this Court is placed on the general power to dispose of war controversies. There is, however, no real distinction. Upon the transfer of the properties in question to the Foundation by a sale the validity of which has been judicially established, they passed out of

the hands of the United States, out of the category of captured property, out of the class of property to which war claims did or could exist, and into the class of private property held in sole and undisputed private ownership. However sweeping the power of Congress to settle war disputes may be, it cannot include the power to settle them, long after the war is over, by confiscating the property of American citizens. The cases cited wholly fail to support the contention. They show only that an Act passed during war, to fill a great and present war-requirement, will not be rendered unconstitutional because it casually and incidentally destroys some vested rights. The 1928 Amendment, though included in the Settlement of War Claims act, was a separate and severable enactment dealing solely with a most limited class of German claims. If it had the effect contended for, it settled them solely by transferring to the German claimants, or destroying for their benefit, long-vested rights of citizens. This was no incidental or casual by-product of the enactment but its sole and direct purpose. If the Fifth Amendment does not prevent such legislation, the protection which it affords is illusory.

The brief for the Petitioner Farbwerke vormals Meister Lucius & Bruning also contends that the 1928 Amendment did not deprive the Foundation of property because the right to royalties (meaning, we assume, the right to sue for use and enjoyment) prior to the seizure become vested in the original German owners and was never seized. We have already shown, as we believe, that nothing ever vested in the German owners except a right which must necessarily end with a transfer of ownership of the patents, and that that right passed to the Custodian both by a separate act of seizure, and also by the mere seizure of the patents, which took from the Germans and gave to the Custodian the indispensable qualification as "owner of the patent," without which the right could not be held. Each of these separate sources of the Foundation's title—the seizure of the rights themselves, and the patent-seizure—operated alike on the

rights for all periods, without distinction. The separate seizure took every right the Germans had "with respect to" the patents, past and future, without any exception of those already accrued. The patent-seizure took from them the whole of their qualification to sue, whether for past or future use and enjoyment. The German Petitioners, however, concede that the right to sue for future use and enjoyment passed to the Foundation. Since the same processes of transfer covered both past and future rights the concession as to one should be deemed a concession as to all.

If construed in such manner as to revivify the German suits the amendment would also be objectionable as a legislative usurpation of judicial functions. Before it was enacted, the courts had decided that a proprietor whose patent had been seized had ceased to be an owner entitled to sue. This was a normal exercise of the judicial function of construing a statute. Congress in the March, 1928, amendment seems to have undertaken to reverse these decisions and to reverse them as to a limited class of instances already *sub judice*, giving no similar benefit to persons otherwise situated. The provision that in the case of any patent seized by the Custodian any suit brought within the time limit "shall be considered as having been brought by the owner within the meaning of" Section 10*f*, is a direct instruction to the courts as to how they shall construe the statute in cases already before them. It cannot be saved, as some declaratory statutes are saved, by construing it as changing the rule for the future and limited to cases arising thereafter. It expressly seeks to constrain the courts in dealing with existing law suits, since the time within which suits could be commenced—one year after the end of the war—expired long before the Amendment was enacted. That that is beyond the legislative power has been well settled since the early years of the Republic.

Ogden v. *Blackledge*, 2 Cranch, 272 (2 L. Ed. 276);
Koshkonong v. *Burton*, 104 U. S. 668;
People v. *Mutual Life Co.*, 16 N. Y. 424;

Cambridge v. *Boston*, 130 Mass. 357;
McCartney v. *Shipherd*, 117 Pac. 814;
Lindsay v. *U. S. Co.*, 120 Ala. 156;
Reiser v. *William Tell Assn.*, 39 Pa. St. 137;
Titusville v. *Keystone Co.*, 122 Pa. St. 627;
Comm. v. *Warwick*, 172 Pa. St. 140;
Virginia Coupon Cases, 25 Fed. 647;
U. S. v. *Salberg*, 287 Fed. 208;
Cooley "Constitutional Limitations" (6th Ed.) 110-113.

These are but a few of the leading cases on this subject, selected from a large and apparently uniform mass. Though most of them deal with the validity of state statutes under state constitutions, the principles involved are fully applicable to the Federal constitution, which is quite as specific both in its allotment of wholly separate powers to the legislature and the judiciary, and in its prohibition of legislative action destructive of rights which have vested under existing law.

In *Koshkonong* v. *Burton*, *supra*, the defendant-in-error had recovered, under a statute of 1859, a judgment which included interest on certain coupons, the principal of which was also comprised in the recovery. The state courts had construed the act of 1859 as permitting this compounding of interest. After these decisions had settled the law of the state, but no less than twelve years before the action was commenced, the legislature, in 1868, had passed an act which provided that "it was and is the true intent" of the act of 1859 that "interest should not be compounded or bear interest upon interest".

This Court distinctly held that this declaratory statute was invalid as applied to the bonds issued prior to its enactment, and as to coupons thereon payable thereafter, not only as a legislative usurpation of judicial power, but as an attempt to impair vested rights which had arisen under the law of the state as settled by the decisions of the courts.

As that was a case in which the action was commenced only long after the enactment of the declaratory statutes it presented facts far more favorable to the validity of the statute than those in the case at bar, where the suits have been pending for years when Congress attempted to affect them.

In *Reiser* v. *William Tell Assn., supra,* the contention was that under an early statute still in force certain premiums were usurious. The courts of the state had so held. The legislature then passed an act which provided that premiums of the class in question should not be deemed usurious. In denying effect to this enactment the Court said:

> "We must again insist that the making of laws and the application of them to cases as they arise are clearly and essentially different functions, and that one of them is allotted by the constitution to the legislature and the other to the courts: 9 Casey 495. Chief Justice Gibson expressed this in *Greenough* v. *Greenough,* 1 Jones 494, 'Every tyro or sciolist knows that it is the province of the legislature to enact, of the judiciary to expound, and of the executive to enforce'. It is expressed in the Bill of Rights, requiring the courts to administer justice by the due course of law. It is expressed in the very form of government, as organized by the constitution, allotting 'the legislative power' to the legislature and 'the judicial power to the courts. * * * We hope we have seen the last expository statute under our constitution; all such are fundamentally vicious."

IV.

The power to seize the accrued royalties (meaning the right to sue for the value of licensed use and enjoyment of the patents prior to seizure) is not doubtful. The contrary is argued under Point IV of the brief of the Petitioner Farbwerke vormals Lucius & Bruning, although there is lacking any Specification of Error by that Petitioner upon which the argument may properly be advanced.

That the power to seize the accrued royalties was *not* doubtful was expressly conceded in the Petition and the brief in support thereof. In the latter, at page 16, there appears the following:

> "Under the Act the Alien Property Custodian undoubtedly had authority to seize the royalties as well as the patents."

This concession is now sought to be withdrawn, but it is still admitted—as it obviously must be—that the language of Section 7(c) of the Trading with the Enemy Act as amended November 11th, 1918, literally and specifically authorizes the seizure of such rights. That language is as follows:

> "If the President shall so require, any money or other property including (but not thereby limiting the generality of the above) patents * * * choses in action, and rights and claims of every character and description * * * may be seized by the Alien Property Custodian" (40 Stat. 1020).

If ever there was language too clear to require or permit construction this is it. The Custodian is given power to seize "any property" whatever. Care is taken that the gen-

erality of this language shall not be limited by what follows, and that the rule of *ejusdem generis* shall not apply. Beyond this, however, the clause specifies "choses in action" and "rights and claims of every character and description" as property which may be seized. If the right to sue under section 10(f) is not a "chose in action" and also a "right" and "claim" of some character or description, it is nothing which language can describe.

To alter so clear a meaning reasoning from the supposed purpose of the statute is wholly insufficient. The Petitioner's argument, moreover, in Point IV of its brief is fallacious. After stating that, as found by this Court, one of the purposes of the statute was "to weaken enemy countries by depriving their supporters of their properties" they attempt to show that this general purpose did not apply to these properties, by quoting discussions while the statute was in passage. Such discussions, of course, can never state the purpose of an act except as desired or understood by the several speakers. Whatever the proponents of a bill in committee may urge as to its intent, it may be adopted for totally different reasons. Moreover, none of the speakers quoted in the brief was or could have been trying to state *all* the purposes of the legislation. The circumstance, if it existed, of their failure to mention that it was intended, also, to give power to seize this particular class of property, cannot possibly countervail the unmistakable fact that it did, in terms, grant that very power.

Respectfully submitted,

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1930.

No. 179. October Term, 1930.

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORM. ROESSLER, and BADISCHE-ANILIN & SODA-FABRIK,
Petitioners,

against

CHEMICAL FOUNDATION, INC.; E. I. DUPONT DENEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,
Respondents.

No. 180. October Term, 1930.

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING,
Petitioner,

against

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BADISCHE-ANILIN & SODA-FABRIK,
Petitioner,

against

E. I. DUPONT DENEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,
Respondents.

MEMORANDUM ON BEHALF OF RESPONDENT THE CHEMICAL FOUNDATION, INC., IN REPLY TO THE BRIEF OF MR. VANDIVER.

(Filed by permission of the Court.)

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The Evening Post Job Printing Office, Inc., 154 Fulton St., New York, N. Y.

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Statement.

While a large part of Mr. Vandiver's brief appears to consist of argument intended to show that the Chemical Foundation, in its suit, was entitled to no relief whatever (as for example at pp. 55-56 of his brief), it was our understanding upon the argument that he conceded, as he had on all other occasions, that the decree in favor of the foundation was correct except for such of its provisions as adjudged:—

(1) That the Foundation had acquired, though it did not seek to enforce, the right to recover from the Dupont Co. for use and enjoyment of the patents before the date on which the patents were conveyed to the Foundation, and

(2) That accordingly the Foundation was entitled to the benefit, as security for the ultimate recovery, of all moneys deposited in the treasury by the licensee, whether deposited in respect of use and enjoyment before or after the said conveyance.

Accordingly, we shall deal herein only with those parts of the brief which attack the correctness of these two features of the decree.

Since all parties now admit that the conveyance of the patents carried to the Foundation the right to recover, under Section 10(f) of the Trading with the Enemy Act, for all use and enjoyment thereafter, the sole remaining question is whether the seizures and sales carried also the right to recover for the earlier period. In discussing this question it should be noted at the outset that the fact that the Foundation did not claim, in its bill of complaint, the rights for the period

prior to seizure, was not due to doubt of its title to them, but was the result of a definite policy, adopted and announced as long ago as the trial in *U. S.* v. *Chemical Foundation* (272 U. S. 1). The Foundation did not desire that the American chemical industry, which it was established to foster, should be burdened by obligations incurred before it began to function, and therefore made a deliberate waiver.

We have in our main brief fully presented our reasons for our belief that seizure of the patents themselves necessarily took from those who owned the patents at the time of seizure, all right to sue under Section 10(f) for any use and enjoyment whenever had, whether such rights were separately seized, or not. To those reasons we desire to add but one observation, in answer to an argument which has not been made, but which may suggest itself to the Court. The provision of Section 10(f) to the effect that if

> "after payment of all such *judgments* and *decrees*, there shall remain any balance of said deposit, such balance shall be repaid to the *licensee*" &c. (Italics ours.)

does not indicate, as might be suggested, that the Act contemplated suits by successive owners of the patents to recover for use and enjoyment during the ownership of each. It merely contemplates exactly what has happened in the case at bar, where under one license the licensee was authorized to operate under patents belonging to several different owners. Under such a license but one tentative royalty would be paid in, but the owner of each licensed patent would sue. Accordingly, under any license, several decrees might be rendered in favor of plaintiffs each of whom owned a patent at the time of suit, and each of these would be entitled to look to the deposited fund as security for his decree. The use of the plural "*decrees*" and "*judgments*" therefore, does not imply that Congress meant to authorize one who, at the time of suit, had ceased to be the owner of a patent, to bring a suit in which the whole future of that patent would be settled.

Turning now to the arguments adduced to show that the rights for the period prior to the seizure of the patents, were not separately seized:

(1)

Mr. Vandiver argues that the seizures did not include the accrued rights because the Alien Property Custodian had no power to seize them.

This contention he bases on the theory that even the comprehensive language of Section 7(c) of the Act, which empowered the Custodian to seize

> "any money or other property including (but not "thereby limiting the generality of the above) patents "* * * choses in action, and rights and claims of every "description",

was not broad enough to include the peculiar privilege conferred upon the "owner of any patent" by Section 10(f). This contention, made in the face of his absolute concession at page 16 of the Petition and Brief on behalf of the former enemy owners on which the Certiorari was granted, to the effect that the Custodian "undoubtedly had authority to seize the royalties as well as the patents," he seeks to support by several propositions.

First, he argues at length that the right to sue conferred by Section 10(f) was neither "property" nor a "chose in action" nor a "right" nor a "claim", because it could be enforced only after the end of the war, before which date Congress could have revoked it. To state this proposition seems to us to refute it. No enemy legal right could be enforced till after the war. If that defect was sufficient to deprive an otherwise perfect German title, lien, or other claim of its normal status as "property" or as a "chose in action", no German rights whatever could ever have been seized. The fact, if it be a fact, that Congress could revoke the grant is equally immaterial. The grant was absolute while it lasted, and it has endured: but even if this had been

a real contingency, the contingent right was still "property", still a "chose in action", and still a "claim". Mr. Vandiver's brief itself continually refers to it as a "right". The elements of futurity and contingency in it are far less important than, for example, in the inchoate right of dower, yet no one has ever doubted that the latter was property.

He also argued that the funds deposited in the treasury by the licensee were money and not enemy money, and that the Custodian accordingly had no power to seize them. But no attempt was ever made to seize or sell these funds themselves. They were deposited as a trust fund to secure the decree in the suit to be brought, or to be returned to the licensee. All that was seized and sold, so far as concerned these moneys, was the owner's right under that trust.

He further argued that rights against these funds are claims against the United States, and cannot therefore be assigned without statutory authority. But the statutory authority to transfer them by seizure is clear, since as has been shown, they are unmistakably within the class of enemy property which the Custodian is expressly authorized to seize. These arguments are but a few of many instances in which the brief confuses the right of action in question with the actual moneys paid in by way of security royalty. No argument as to what could or could not be done with the latter has any tendency to show what could or could not be done with the former.

(2)

Mr. Vandiver also argues that the statutes, particularly the 1928 Amendment, show an intent on the part of Congress that the right to sue under Section 10(f) should not be seizable. As to the original Act and the earlier amendments we cannot follow his reasoning. The 1928 Amendment, however, seems to us to recognize conclusively that the very rights here under discussion are seizable. It, in terms, applies to suits previously brought by the Custodian under patents seized by him, to recover for use and enjoyment had

before such seizure, and provides that in such suits the Custodian shall be deemed the "owner" entitled to sue. This is a clear recognition that after seizure and before sale the Custodian was vested either by mere ownership of the patent or by the independent effect of the seizure itself, with the rights theretofore accrued. Obviously this could not be so unless, either independently, or as an appurtenance to the patents, such rights were seizable.

(3)

Mr. Vandiver argues that the Germans never ceased to be the "owners" of the patents, because the Federal Trade licenses had cut out of them so much of their substance that thereafter the conveyances gave the Foundation, under the rule in *Waterman* v. *Mackenzie*, 138 U. S. 252, the status of a licensee only. That case, however, itself disposes of this contention. There, a license having been granted to make and sell, only, the licensee attempted to sue for infringement, and the court held that since the right to use was not included in the license, there was no assignment to the licensee, who was therefore not the person authorized by the Patent Law to sue in his own name. They also held, however, that the licensor should have been joined as plaintiff since he was the owner entitled to sue. As he had parted with far more than, in the case at bar, had been taken from these patents by the issue of the non-exclusive Federal Trade licenses, it is clear that the existence of such a license does not so diminish ownership as to deprive the licensor, or his assignee, of his status as "owner". For another reason moreover, no reasoning based on *Waterman* v. *Mackenzie* can govern the case at bar. The question there at issue was the construction of a totally different statute, differently worded, dealing with a radically different situation and subject matter, and in no sense *in pari materia*. Finally, if Mr. Vandiver's contention in this behalf were sound, the sale of a patent subject to an outstanding license, would in every

case, leave the buyer unable to sue in his own name for infringement.

In this connection Mr. Vandiver incorrectly states that the President continued the power of the Federal Trade Commission to license under patents which had been seized. This is offered as further proof that the Custodian got and sold to the Foundation something less than ownership. It is a clear error, however. The President could do nothing of the kind. Section 10 of the Act gave power to license only under enemy-owned patents, and a seized patent was no longer enemy-owned. The power to license under seized patents was nevertheless (quite needlessly) withdrawn in the Executive Order of Dec. 3, 1918 (R. 121). It was not, as stated at page 43 of the brief, restored by the Order of November 25th (R. 124), which affects only an order of May 11th (R. 111) having nothing to do with the power to license under patents. The Foundation did not, therefore, buy the patents subject to a continuing power, in another, to issue licenses under them.

(4)

In construing the instruments of seizure in question, we submit that the Court should give great weight to executive construction, which has in this instance been unusually specific and uniform. In at least four instances extending over more than ten years, different branches of the Executive have practically construed the seizures as including the rights in question. President Wilson in his Executive Order of February 13th, 1920 (R. 89) stated that the original intent of the earlier orders, under which the whole transaction was carried through, was that thereunder the Custodian should sell property "including rights to receive moneys by way of royalties or otherwise as compensation for the use of patents". Since such rights could not be sold unless seized, this is both first-hand evidence as to the actual intent of the seizure—the most important factor, as the Circuit

Court of Appeals held, in construing an instrument of confiscation—and an ordinary executive construction of the instruments of seizure as actually executed. The Confirmatory Assignment of the Alien Property Custodian, issued under the foregoing order on March 1st, 1921 (R. 95), asserts the same original intention, and by specifically conveying anew, to the Foundation, the rights in question, construes the seizures as having vested title in those rights in him. These instruments, of course, refer to all rights to sue for use and enjoyment of the patents, whenever had; but they must be taken as including at least the rights for the earlier period, since for the later period no special seizure or conveyance would be necessary, as the transfer of the patents themselves would admittedly carry with it all rights subsequently to accrue.

This construction has since been several times reiterated, notably by the Department of Justice, when, on the trial and during the appeals in *U. S.* v. *Chemical Foundation* (172 U. S. 1), it attacked the sales on the very ground that they included the rights in question; and by the Alien Property Custodian, when, in these very suits, he contended below that the seizures took every right, of this character, which the Germans ever had.

(5)

The acts of the President in authorizing the Alien Property Custodian to sell the rights in question, and of the Custodian in selling them as so authorized, are orders of a department of the government made or purporting to be made in pursuance of war legislation with regard to enemy property. We therefore feel bound to call to the attention of the court the provisions of Annex 1 of the Treaty of Versailles, operative under the Treaty of Berlin, which appear to confirm such orders and to prevent the raising of any question in regard thereto. The applicable provisions are as follows:

ANNEX.

1.

"In accordance with the provisions of Article 297, paragraph (d), *the validity* of vesting orders and of orders for the winding up of businesses or companies, and *of any other orders*, directions, decisions or instructions *of* any court or *any department of the Government* of any of the High Contracting Parties *made* or given, *or purporting to be made* or given, *in pursuance of war legislation with regard to enemy property*, rights and interests *is confirmed. The interests of all persons shall be regarded as having been effectively dealt with by any order, direction, decision or instruction dealing with property in which they may be interested, whether or not such interests are specifically mentioned in the order, direction, decision, or instruction. No question shall be raised as to the regularity of a transfer of any property, rights or interests dealt with in pursuance of any such order, direction, decision or instruction*" (italics ours).

(Part X, Section IV Article 297(d) and Annex paragraph I Treaty of Versailles, adopted by Article II(1), Treaty of Berlin, 42 Stat. 1939, 1943.)

Respectfully submitted,

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SEIFORDE M. STELLWAGEN,
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Attorneys for Respondent,
The Chemical Foundation, Inc.

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Nos. 271-274

In the Supreme Court of the United States

OCTOBER TERM, 1930

WALTER O. WOODS, AS TREASURER OF THE UNITED STATES, PETITIONER

v.

THE CHEMICAL FOUNDATION, INC., AND E. I. DU PONT DE NEMOURS & CO., RESPONDENTS

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

(NOTE.—All of the captions will be found on pages 1 and 2 of the petition.)

In the Supreme Court of the United States

OCTOBER TERM, 1930

No. ——

WALTER O. WOODS, AS TREASURER OF THE UNITED States, petitioner

v.

THE CHEMICAL FOUNDATION, INC., AND E. I. du Pont de Nemours & Co., respondents

---

No. ——

HOWARD SUTHERLAND, AS ALIEN PROPERTY CUSTODIAN, petitioner

v.

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, E. I. du Pont de Nemours & Co., and Walter O. Woods, as Treasurer of the United States, respondents

No. ——

HOWARD SUTHERLAND, AS ALIEN PROPERTY CUSTODIAN, petitioner

v.

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORM. Roessler, E. I. du Pont de Nemours & Co., and Walter O. Woods, as Treasurer of the United States, respondents

No. ——

HOWARD SUTHERLAND, AS ALIEN PROPERTY CUSTODIAN, petitioner

v.

BADISCHE ANILIN & SODA-FABRIK, E. I. DU PONT DE Nemours & Co., and Walter O. Woods, as Treasurer of the United States, respondents

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

The Solicitor General, on behalf of Walter O. Woods, as Treasurer of the United States of America, and Howard Sutherland, as Alien Property Custodian, petitioners, prays that writs of certiorari issue to review the several decrees of the United States Circuit Court of Appeals for the Third Circuit, entered in the above cases (docketed as Nos. 4095, 4097, 4099, and 4101 in the Circuit Court of Appeals), on March 4, 1930 (R. 264–269), which

affirmed decrees of the District Court of the United States for the District of Delaware against the petitioners (R. 190–201).

OPINIONS BELOW

The opinion of the District Court (R. 176) is reported in 29 F. (2d) 597. The opinion of the Circuit Court of Appeals is reported in 39 F. (2d) 366, and will be found at page 251 of the record.

On June 4, 1930, the Chief Justice extended for 35 days from that date the time within which these petitioners might apply for writs of certiorari.

STATEMENT

The facts are clearly stated, and the law applicable thereto discussed, in the opinions below and it is unnecessary to restate the same in this petition.

REASONS FOR GRANTING THE WRITS

These petitioners do not now contend, as they contended in the courts below, that they should prevail in all of these four suits. These causes have been thoroughly considered by two courts, both of which have reached the same conclusions. The causes of action arise under a war-time statute which has no general application in time of peace and upon a peculiar state of facts which will not likely arise in the future except as to certain related cases which fall within the same category as these four suits. The Treasurer of the United States and the Alien Property Custodian, however,

feel compelled to file this petition because the German respondents, Farbwerke vormals Meister Lucius & Bruning, Deutsche Gold & Silber Scheide Anstalt vorm. Roessler and Badische Anilin & Soda Fabrik, who failed in the courts below, have filed a petition for writs of certiorari. (Docket Nos. 179, 180, 181, and 182.) Furthermore, these causes are not so clear and simple that the Treasurer and the Alien Property Custodian are justified in assuming that there is no possibility that this Court will refuse to review the matter upon the petition of the German respondents and that the ultimate decision of the causes may not be in favor of them and against these petitioners. If this should occur, and if the decrees against the German respondents should be reversed while the decree in favor of the Chemical Foundation should stand, such decrees would be inconsistent, and the Treasurer of the United States would be placed in an awkward position in that he would in that event be ordered to pay royalty to the German respondents which both courts below determined had been assigned to the Chemical Foundation.

This whole litigation in effect is now narrowed to a controversy between the German respondents and the Chemical Foundation. It is a matter of indifference to these petitioners whether the petition of the German respondents is granted or not. However, these petitioners feel that if the petition of the German respondents is granted then this Court should review all the decrees below.

Inasmuch as the German respondents have filed the requisite number of copies of the record in cases 179, 180, 181, and 182, these petitioners do not deem it necessary to file any additional copies of the record, for the record filed covers all of these cases and the filing of any additional copies would be superfluous.

These petitioners, therefore, respectfully pray that if writs of certiorari are granted in cases Nos. 179, 180, 181, and 182, filed by the German respondents, then their petition for writs of certiorari to review the decrees of the Circuit Court of Appeals in Nos. 4095, 4097, 4099, and 4101 likewise be granted.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.

JULY, 1930.

U. S. GOVERNMENT PRINTING OFFICE: 1930

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JUL 31 1930
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 271. October Term, 1930.

WALTER O. WOODS, as Treasurer of the United States,
Petitioner,

against

THE CHEMICAL FOUNDATION, INC., and E. I. DUPONT DENEMOURS & CO.,
Respondents.

No. 272. October Term, 1930.

HOWARD SUTHERLAND, as Alien Property Custodian,
Petitioner,

against

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, E. I. DUPONT DENEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,
Respondents.

No. 273. October Term, 1930.

HOWARD SUTHERLAND, as Alien Property Custodian,
Petitioner,

against

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORM. ROESSLER, E. I. DUPONT DENEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,
Respondents.

No. 274. October Term, 1930.

HOWARD SUTHERLAND, as Alien Property Custodian,
Petitioner,

against

BADISCHE ANILIN & SODA-FABRIK, E. I. DUPONT DENEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,
Respondents.

BRIEF ON BEHALF OF PLAINTIFF-RESPONDENT, THE CHEMICAL FOUNDATION, INC., IN OPPOSITION TO PETITION FOR WRITS OF CERTIORARI.

JOSEPH H. CHOATE, JR.,
WM. G. MAHAFFY,
SEIFORDE M. STELLWAGEN,
JAMES GARRETSON,
Attorneys for Respondent.

The Evening Post Job Printing Office, Inc., 154 Fulton St., New York, N. Y.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

WALTER O. WOODS, as Treasurer of the United States,
Petitioner,

AGAINST

THE CHEMICAL FOUNDATION, INC., and E. I. DUPONT DENEMOURS & CO.,
Respondents.

No. 271.
October Term,
1930.

HOWARD SUTHERLAND, as Alien Property Custodian,
Petitioner,

AGAINST

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, E. I. DUPONT DENEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,
Respondents.

No. 272.
October Term,
1930.

HOWARD SUTHERLAND, as Alien Property Custodian,
Petitioner,

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DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORM. ROESSLER, E. I. DUPONT DENEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,
Respondents.

No. 273.
October Term,
1930.

HOWARD SUTHERLAND, as Alien Property Custodian,
Petitioner,

AGAINST

BADISCHE ANILIN & SODA-FABRIK, E. I. DUPONT DENEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,
Respondents.

No. 274.
October Term,
1930.

BRIEF ON BEHALF OF PLAINTIFF-RESPONDENT, THE CHEMICAL FOUNDATION, INC., IN OPPOSITION TO PETITION FOR WRITS OF CERTIORARI.

Facts and Opinions Below.

In the interest of brevity, the facts are not re-stated. They appear in the opinions of the Courts below (District Court (R. 176), 29 Fed. (2d) 597; Circuit Court of Appeals (R. 251), 39 Fed. (2d) 366), and in the brief filed by this Respondent in opposition to the Petition for writs of certiorari filed by the German Petitioners (Respondents herein) Farbwerke vormals Meister Lucius & Bruning, Deutsche Gold & Silber Scheide Anstalt vorm. Roessler, and Badische Anilin & Soda Fabrik (Docket Nos. 179, 180, 181 and 182, October Term).

Statement.

The Petitioners, the Treasurer of the United States and the Alien Property Custodian, pray (Petition, pp. 4, 5) that certiorari be granted in the above-entitled suits *only in event* that certiorari is granted as prayed for by the German Petitioners in Docket Nos. 179, 180, 181 and 182. They say, furthermore (Petition, p. 4), that "It is a matter of indifference" to them "whether the petition of the German respondents is granted or not."

This Respondent, The Chemical Foundation, Inc., has fully replied, by its brief filed in Docket Nos. 179, 180, 181 and 182, to the arguments advanced by the German Petitioners in support of their Petition in those causes, and has submitted that no reason has been stated by them which should influence this Court to conclude that the unanimous decisions of the Courts below should be reviewed. The

avowal by the Treasurer and the Custodian of the dependence of their Petition upon the granting of that of the Germans would appear to make unnecessary, therefore, the filing of any brief by this Respondent in answer to the Petition of the Treasurer and the Custodian, save to avoid any inference of acquiescence in such Petition from a failure to reply thereto. The Foundation opposes the granting of the Petition of the Treasurer and the Custodian, and submits that the Petition itself suggests a most persuasive reason why it should not be granted, in the following statements taken therefrom (p. 3):

> "These causes have been thoroughly considered by two courts, both of which have reached the same conclusions. The causes of action arise under a war-time statute which has no general application in time of peace and upon a peculiar state of facts which will not likely arise in the future except as to certain related cases which fall within the same category as these four suits."

Further Reasons for Denying the Writs.

(a) *As to the Treasurer of the United States.*

This official was made a defendant because of statutory requirement (*Trading with the Enemy Act*, Sec. 10(f), Oct. 6, 1917, c. 106, 40 Stat. 420). The recovery sought by the bills of complaint is primarily of a reasonable royalty for the use and enjoyment of the patented inventions. The only interest of the Treasurer is that of a stake-holder, and arises from the circumstance that the funds in his hands constitute, by and in the terms of the statute (Sec. 10(d), *id.*), "a trust fund for the said licensee and for the owner of the said patent," to which resort may be had for the payment, *pro tanto*, of any such reasonable royalty as may be awarded. The statute further provides for the disposition of these funds by the Treasurer *as the Court shall ultimately direct* (Sec. 10(f), *id.*).

(b) *As to the Alien Property Custodian.*

This official did not institute suit within the period permitted by law (Sec. 10(f), *id.*), namely "after the end of the war and until the expiration of one year thereafter." He moved to be substituted as party plaintiff in lieu of the German Plaintiffs (Respondents herein), but it was held that he could not thus avoid the bar of the statute.

At best, however, the granting of his motions (the denial of which he now seeks to have reversed), would have been a fruitless thing. He asserted, in making them (R. pp. 66, 76, 87), that by his seizures all rights to recover royalties for the use of the licensed patents had been acquired by him. Yet he had theretofore ceased to own these rights when he assigned them to this Respondent (R. pp. 106-111, 118-125),* by assignments which this Court has already considered and sustained (*United States* v. *Chemical Foundation*, 272 U. S. 1).

Respectfully submitted,

JOSEPH H. CHOATE, JR.,
WM. G. MAHAFFY,
SEIFORDE M. STELLWAGEN,
JAMES GARRETSON,
Attorneys for Respondent
The Chemical Foundation, Inc.

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* NOTE: See especially confirmatory assignment of March 1, 1921, wherein the Custodian confirmed and ratified "the sale and assignment of" and did thereby (R. 123-124)

"* * * sell, assign, transfer and set over to said The Chemical Foundation (Inc.), all choses in action, rights, interests, and benefits under agreements and rights and claims of every character and description growing out of and appurtenant to the ownership of said property; including (but not thereby limiting the generality of the foregoing) rights to receive moneys by way of royalties or otherwise as compensation for the use of patents, copyrights, and trade-marks, *and all right, title, and interest in and to the choses in action and the funds referred to in section 10, sub-section (f) of the 'trading with the enemy act', as amended, acquired by the Alien Property Custodian by virtue of the seizures* by which there were seized patents, copyrights, or trade-marks, under which a license had theretofore been granted in accordance with the provisions of section 10, sub-section (c) of said act, as amended * * *." (Italics ours.)

SUPREME COURT OF THE UNITED STATES.

Nos. 179, 180, 181, 182, 271, 272, 273, 274.—October Term, 1930.

Farbwerke Vormals Meister Lucius & Bruning, Deutsche Gold & Silber Scheide Anstalt Vorm., etc., et al., Petitioners,
179 *vs.*
Chemical Foundation, Inc.; E. I. du Pont de Nemours & Co., etc., et al.

Farbwerke Vormals Meister Lucius & Bruning, Petitioner,
180 *vs.*
E. I. du Pont de Nemours & Co. and Walter O. Woods, as Treasurer of the United States.

Deutsche Gold & Silber Scheide Anstalt Vorm. Roessler, Petitioner,
181 *vs.*
E. I. du Pont de Nemours & Co. and Walter O. Woods, as Treasurer of the United States.

Badische-Anilin & Soda-Fabrik, Petitioner,
182 *vs.*
E. I. du Pont de Nemours & Co. and Walter O. Woods, as Treasurer of the United States.

Walter O. Woods, as Treasurer of the United States, Petitioner,
271 *vs.*
The Chemical Foundation, Inc., and E. I. du Pont de Nemours & Co.

Howard Sutherland, as Alien Property Custodian, Petitioner,
272 *vs.*
Farbwerke Vormals Meister Lucius & Bruning, E. I. du Pont de Nemours & Co., and Walter O. Woods, as Treasurer of the United States.

Howard Sutherland, as Alien Property Custodian, Petitioner,
273 *vs.*
Deutsche Gold & Silber Scheide Anstalt Vorm. Roessler, E. I. du Pont de Nemours & Co., and Walter O. Woods, as Treasurer of the United States.

Howard Sutherland, as Alien Property Custodian, Petitioner,
274 *vs.*
Badische Anilin & Soda-Fabrik, E. I. du Pont de Nemours & Co., and Walter O. Woods, as Treasurer of the United States.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[April 13, 1931.]

Mr. Justice McReynolds deliyered the opinion of the Court.

The writs in the eight above entitled causes were granted upon the petitions of parties to four suits instituted to recover compensation for use by E. I. du Pont de Nemours and Co. of three patents, formerly owned by three of them (the German corpora-

tions), under licenses issued as provided by the Trading with the Enemy Act, approved October 6, 1917. 40 Stat. 411, 420, 421, 459, 460, 1020, 1021.

April 6, 1917, the United States declared war with Germany; July 1, 1921, Congress declared it at an end.

The Trading with the Enemy Act authorized the President to appoint an Alien Property Custodian; also to license domestic corporations to make, use and vend articles covered by enemy-owned patents, upon agreed terms, payments therefor to be deposited with the United States Treasury in trust for the owners. And it declared—Section 10—that such a license should be a complete defense to any suit by the owner for damages on account of anything done thereunder, except as provided by subsection (f), which follows.

"The owner of any patent . . . under which a license is granted hereunder may, after the end of the war and until the expiration of one year thereafter, file a bill in equity against the licensee . . . for recovery from the said licensee for all use and enjoyment of the said patented invention, . . . The amount of said judgment and decree, when final, shall be paid on order of the court to the owner of the patent from the fund deposited by the licensee, so far as such deposit will satisfy said judgment and decree; . . ."

License No. 19, granted January 21, 1918, by the Federal Trade Commission, acting under designation by the President, authorized the E. I. du Pont de Nemours and Co. to make, use and vend the inventions covered by United States Letters Patent Nos. 680,395, 868,294, and 718,340, severally owned by German corporations, petitioners in Causes Nos. 180, 181 and 182. Substantial payments by the licensee were deposited in the Treasury. The license terminated Septembr 1, 1920.

Th Act of March 28, 1918, 40 Stat. 459, 460, amended Section 12, Trading with the Enemy Act, to provide—"The Alien Property Custodian shall be vested with all the powers of a common-law trustee in respect of all property, other than money, which has been or shall be, or which has been or shall be required to be, conveyed, transferred, assigned, delivered, or paid over to him in pursuance of the provisions of this Act, and, in addition thereto . . . shall have power to manage such property and do any act or things in respect thereof or make any disposition thereof or of

any part thereof, by sale or otherwise, and exercise any rights or powers which may be or become appurtenant thereto or to the owner thereof:". And the Act of November 4, 1918, 40 Stat. 1020, 1021, amended subsection (c) of Section 7 to read—.

"If the President shall so require any money or other property including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade marks, choses in action, and rights and claims of every character and description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this Act.

"Any requirement made pursuant to this Act, or a duly certified copy thereof, may be filed, registered, or recorded in any office for the filing, registering, or recording of conveyances, transfers, or assignments of any such property or rights as may be covered by such requirement (including the proper office for filing, registering, or recording conveyances, transfers, or assignments of patents, copyrights, trade-marks, or any rights therein or any other rights); and if so filed, registered, or recorded shall impart the same notice and have the same force and effect as a duly executed conveyance, transfer, or assignment to the Alien Property Custodian so filed, registered, or recorded."

By three separate, similar written instruments, issued one February 3 and two March 22, 1919, the Alien Property Custodian declared concerning each of the letters patent numbered as above stated—"I do seize said letters patent and every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof, subject to the rights of E. I. du Pont de Nemours & Company, Wilmington, Delaware." And by an instrument dated April 10, 1919, he declared—"I do sell, assign, transfer and set over unto the said the Chemical Foun-

dation (Inc.), its successors and assigns, the whole right, title, and interest acquired by me and by said A. Mitchell Palmer [former Custodian], each as said Alien Property Custodian" in and to the same letters patent.

June 23, 1922, the Chemical Foundation, Inc., brought suit against E. I. du Pont de Nemours and Co. and Frank White, Treasurer of the United States. It alleged the grant of the license to the defendant Company January 21, 1918, to make, use and vend the inventions described and operation thereunder, but declared complainant was not informed whether any moneys were "paid or are payable by said defendant to the Alien Property Custodian, as required by the terms of said license, nor as to what moneys, if any, are now held by the defendant Treasurer of the United States by virtue thereof." Further, that subsequent to the license the Alien Property Custodian seized and sold to complainant all of the specified letters patent, together with every right, title and interest with respect thereto. The prayer asked discovery and accounting, also that the court determine reasonable compensation for use of the letters patent after complainant acquired them. And further for judgment to be satisfied from funds on deposit in the Treasury, if sufficient, otherwise, by the du Pont Company. The reason for limiting the prayer to compensation after date of acquisition is not disclosed.

June 30, 1922, petitioners in Causes Nos. 180, 181 and 182 brought separate suits against the same defendants. Each alleged ownership of one of the letters patent, described in the license to the du Pont Company, and asked recovery for the use thereof, the judgment to be paid out of funds in the Treasury, if sufficient, otherwise, by that Company.

Answering the bill of the Chemical Foundation, the du Pont Company admitted use of the letters patent under the license; alleged payment of $61,884.98, as reasonable compensation, to the Alien Property Custodian for deposit in the Treasury, termination of the license September 1, 1920; etc.

October 6, 1927, the District Court ordered consolidation of the four causes "to the extent of the issues therein relating to Federal Trade Commission License No. 19."

November 9, 1927, Frank White, Treasurer, moved to dismiss the bill of the Chemical Foundation because it was not owner of the patents within intendment of Section 10, Trading with the

Enemy Act, also because no adequate ground for relief had been shown. He also answered; admitted assignment of the letters patent to the Foundation; denied that it was the "owner" within Section 10; admitted the payment into the Treasury of $61,884.98. On the same date he answered the bills in Causes Nos. 180, 181 and 182, demanded proof of the allegations, etc.

January 16, 1928, the du Pont Company moved to dismiss the bills in Causes Nos. 180, 181 and 182 because the complainants were not owners of the letters patent within Sec. 10, and because the facts alleged were insufficient to justify relief. It also answered; denied that the complainants had owned any interest in the letters patent since April 10, 1919; admitted that it had been licensed to make, use and vend the inventions covered by the letters patent, and had paid the agreed royalty; denied the right of the complainants to recover anything for such use, etc.

April 28, 1928, in each of the Causes Nos. 180, 181 and 182 the Alien Property Custodian moved that he be substituted for the complainant. He alleged that under the seizures of February 3 and March 22, 1919, his predecessor became owner of the letters patent and that he alone was authorized to sue within one year after the war ended, under Section 10 (f), Trading with the Enemy Act, to recover the reasonable royalty; also that under Section 19, Act of March 10, 1928 (Settlement of War Claims Act), 45 Stat. 254, 277, he should be substituted.

The District Court denied the Treasurer's motions to dismiss, also those of the Alien Property Custodian for substitution as complainant. It held the German corporations were not "owners" of the accrued royalties; that the Chemical Foundation by assignment from the Alien Property Custodian April 10, 1919, became the owner of the patents, together with accrued royalties, and was entitled to an accounting to ascertain the reasonable compensation for their use and enjoyment during the period between April 10, 1919, and September 1, 1920, and when determined, this should be satisfied from funds in the Treasury derived from payments by the licensee, if sufficient, and if not, by the du Pont Company.

Except the Chemical Foundation and the du Pont Company, all parties appealed to the Circuit Court of Appeals. That court affirmed the action of the District Court.

Joint and several petitions for certiorari by the three German corporations were granted in Causes Nos. 179, 180, 181 and 182.

Writs were also allowed upon the petitions of Woods, Treasurer of the United States, and Sutherland, Alien Property Custodian, in Nos. 271, 272, 273 and 274. These petitioners do not now seek affirmative relief. They brought the causes here in order to save possible rights.

The Chemical Foundation limits its demand to compensation for the period between April 10, 1919 and September 1, 1920. This demand was sustained below and is not now opposed.

The German corporations—former owners—limit their demands to compensation for the period between January 21, 1918 and April 10, 1919. These demands were denied below. They are the subjects of the only substantial controversy before us; and its solution depends upon whether the Alien Property Custodian acquired the rights of the owners to collect for their previous use under License No. 19 when he seized the patents February 3 and March 22, 1919. Both courts below decided against the German corporations, and properly so we think.

The Trading with the Enemy Act, as amended, in very definite terms authorized seizure of the patents in question; also "rights and claims of every character and description owing to or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy . . ." This Court has said—"At the time of the passage of the act, a large amount of property was owned and much business was carried on by alien enemies and their allies in this country. Congress determined that their property should be taken over and that trade with them should cease. The purpose was to weaken enemy countries by depriving their supporters of power to give aid." *Miller* v. *Robertson*, 226 U. S. 243, 248. "There is nothing to support a strict construction of the Act in respect of the seizure and disposition of enemy property. On the other hand, contemporaneous conditions and war legislation indicate a purpose to employ all legitimate means effectively to prosecute the war. The law should be liberally construed to give effect to the purposes it was enacted to subserve." *United States* v. *Chemical Foundation*, 272 U. S. 1, 10.

The Alien Property Custodian declared: "I do seize said letters patent and every right, title and interest with respect thereto," subject to the rights of the du Pont Company. Considering the

general purpose of Congress to weaken the enemy, this language certainly is broad enough to include the right of the owners of the seized patents to recover for their use under the outstanding license. We can discover no reason for thinking that the custodian intended to seize the patents but to leave with enemies a right to sue for compensation on account of their use during earlier months of the war.

The validity of the seizure by the Alien Property Custodian and of the subsequent sale and transfer to the Chemical Foundation was affirmed in *United States* v. *Chemical Foundation*, 272 U. S. 1.

The most plausible argument against the conclusion below rests upon Section 7, Trading with the Enemy Act, as amended November 4, 1918. This provides that any requirement under the Act may be filed for registration and "if so filed, registered, or recorded shall impart the same notice and have the same force and effect as a duly executed conveyance, transfer, or assignment to the Alien Property Custodian so filed, registered, or recorded."

It is said that a mere transfer of letters patent by voluntary conveyance would not pass the right to recover accrued compensation for use by a licensee; and that under the statute this rule must be applied to the seizure. Answering this the court below well said—

> "Accepting this law in the abstract, it is pertinent to note that we are not here concerned with an assignment of a patent or of royalties by the German owners to the Alien Property Custodian. We are concerned with their capture—an act of war. We are not dealing with an assignment of patents where there is a question of what was in the minds of the contracting parties as to royalties and as to what passed and what was retained under the terms of an instrument they had drawn and signed. We are dealing with an act of seizure and have to determine wholly outside the law of assignments whether by the terms of the symbol of seizure the royalties in question were included. Having in mind the purpose of the law and observing that the Custodian manifestly attempted to seize the German patents and everything 'in respect' to them and to their ownership, we are of opinion that he accomplished what he attempted by words that embrace the royalties in question, and that, in conse-

quence, the German plaintiffs were owners of neither the patents nor the royalties at the time they instituted their suits . . ."

The Settlement of War Claims Act of March 10, 1928, 45 Stat. 254, 277, provides—

"Sec. 19. Subsection (f) of section 10 of the Trading with the Enemy Act, as amended, is amended by adding at the end thereof the following new paragraph:

'In the case of any such patent, trade-mark, print, label, or copyright, conveyed, assigned, transferred or delivered to the Alien Property Custodian or seized by him, any suit brought under this subsection, within the time limited therein, shall be considered as having been brought by the owner within the meaning of this subsection, in so far as such suit relates to royalties for the period prior to the sale by the Alien Property Custodian of such patent, trade-mark, print, label or copyright, if brought either by the Alien Property Custodian or by the person who was the owner thereof immediately prior to the date such patent, trade-mark, print, label, or copyright, was seized or otherwise acquired by the Alien Property Custodian.'"

Counsel suggest that, although this enactment came long after transfer of the patents and rights incident thereto to the Chemical Foundation, and years after the present suits began, it authorized the German claimants to recover as if owners according to the terms of the original act and the license to the du Pont Company. Manifestly, such an interpretation would give rise to a grave constitutional objection—deprivation of the Chemical Foundation of property without due process. Moreover, the licensee accepted the grant under the provision that any suit for compensation should be brought by the owner within one year after termination of the war, "for all use and enjoyment of the said patented invention," and if not "then the licensee shall not be liable to make any further deposits, and all funds deposited by him shall be repaid to him on order of the alien property custodian." In the circumstances the act cannot be interpreted and applied as suggested.

The decree below must be affirmed.

Mr. Justice SUTHERLAND and Mr. Justice STONE took no part in the consideration or decision of this case.